

No. 10583

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME III
Pages 837 to 1080

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

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PAUL P. O'BRIEN,
CLERK

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EARL H. BROWN

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please? [1152]

The Witness: Earl H. Brown.

Trial Examiner Riemer: Where do you live, Mr. Brown?

The Witness: Pocatello.

Trial Examiner Riemer: Thank you.

Direct Examination

Q. (Mr. Merrill) What is your present employment?

A. Mechanic for the Idaho Refining Company.

Q. How long have you been working as a mechanic for the Idaho Refining Company?

A. About 2-1/2 years.

Q. While thus working as a mechanic, did you know a man by the name of Archibald?

A. Yes, sir.

Q. Do you recall his first name? A. Leo.

[1153]

Q. During the period of time that you observed him working for the company, what was the regularity of his appearance for work?

A. Well, it seemed to me personally that he was a little slow for that kind of work, for that kind of job.

(Testimony of Earl H. Brown.)

Q. Had you ever observed him in any sense unnatural?

A. Well, I just don't know what you mean by that.

Q. Well, did he ever come to work when he was not able to work? A. Yes, sir.

Q. How many times, if you recall?

A. Oh, several times,—five or six times that I can recall, offhand.

Q. Now, when he did appear, at what time was that, usually, on what days?

A. Most generally the first of the week.

Q. When he did thus appear, what would he do?

A. Well, he didn't—he wasn't able to work. He would show up sometimes and wasn't able to work; he would get sick and have to lay off, or go outside, or something, and he wasn't able to get down on a truck, or under a truck and work.

Q. How often did that occur, or have you so testified?

A. Well, I have known three or four times, anyway, or more, where he has had to take off, that he couldn't go to work.

Q. Did you ever talk to him about his condition?

A. Yes, sir. [1155]

Q. What did he say that his trouble was?

A. Well, he was,—he had been working too hard and had been out a little late; he was sick.

Q. Now, was any complaint made—I will withdraw the question. Do you know Kermit Rice?

(Testimony of Earl H. Brown.)

A. Yes, sir.

Q. Who was Kermit Rice?

A. He is my foreman.

Q. And was any complaint made to him touching the attitude or conduct of Archibald?

A. Yes, sir.

Q. Did you ever make any comment to Rice about him? A. Yes, sir.

Q. In what respect?

A. That he would do those things, and come to work in a condition where he couldn't go to work, and I would have to stay and do the work on account of him not being able to work, and I would have to come back nights to do it, because we were shorthanded by him laying off, and he finally was too slow to keep up his end of it, the way I looked at it, and I mentioned it to Mr. Rice a time or two.

Q. Was there any comment made by you with respect to his discharge? A. No, sir.

Q. Now, do you recall an occasion when Mr. Rice was on his [1156] vacation, I believe that he went back to New York, that was in July, of 1941?

A. He went back after a truck, yes, sir.

Q. And who had charge of the shop at that time? A. I did.

Q. Did you observe anything unusual with Archibald at that time?

A. Well, he did too much celebrating on the Fourth and couldn't work for three or four days.

(Testimony of Earl H. Brown.)

Q. And who did his work when he was thus off? A. I did.

Q. Did you make any comment to Archibald about his absence? A. I did.

Q. What did he say, if anything?

A. We had one other fellow working with us, and they made arrangements during the Fourth of July that one of the fellows was to take off three or four days, and Archibald was going to take off the Fourth, and they was to come back to work. I was working straight through, and instead, neither one came back. One fellow came back in three days, which he was supposed to take, and Archibald took three days, and the next day he came back and was not able to work.

Q. Did you call this to Archibald's attention?

A. I told him of the condition of the equipment that we had down, and I was alone, but he couldn't work. He went home that [1157] forenoon.

Q. Did you comment upon him—upon his drinking habits?

A. Well, I believe as nearly as I can recall now, that I told him that he probably wouldn't be there long when the boss came back, if he knew about the condition of things—something to that effect.

Q. What did he say, if anything?

A. I believe that he told me he would try and come back at noon, but as nearly as I recall, he didn't come back until the next day. He was off four days that one time.

(Testimony of Earl H. Brown.)

Q. Did he ever ask you to drink with him?

A. Yes, sir.

Q. And have you done so? A. No, sir.

Q. Was that on more than one occasion?

A. He never did there at the shop. He asked me uptown, and over at his home.

Q. Do you recall an instance when he spent the major portion of a day sitting in an automobile?

A. When he was sick, yes, sir.

Q. When was that, if you know?

A. He came to work one morning, and he was,—he had been around the place for a while and he went out and sat in a car. I don't remember whose car it was. It was parked outside of the lot.

Q. Did he say why he was out there? [1158]

A. He was sick at his stomach.

Q. Did you go out to hunt for him?

A. I did.

Q. Did you know where he was before you left the garage to look for him?

A. No, sir. I knew that he went outside, but I didn't know where he had gone to.

Q. What did you go outside for?

A. I went outside to see if he couldn't get in shape to come back to work.

Q. Where did you find him?

A. In this car.

Q. Did you know where he was when you left to look for him? A. No, sir.

Q. Did you talk to him when he was in the car? A. Yes, sir.

(Testimony of Earl H. Brown.)

Q. What did he say?

A. I asked him how he was feeling, and if he could come back to work, that we was getting swamped and had to have some help.

Q. And what did he say?

A. That he couldn't go back to work; he was too sick.

Q. How long did he stay in the car?

A. I believe most of the day.

It was along in the afternoon—I don't know when he left or whether anybody took him home. I don't recall that he came [1159] to work at all.

Q. That day?

A. I don't believe that he came in the shop at all.

Q. Do you recall the time at the Refining Company's plant when Mr. Archibald was discharged?

A. I wasn't there right at that time. I came out,——

Q. Do you recall the day?

A. No, I don't. I don't know what date it was.

Q. What month was it? A. I don't recall.

Q. Was it in November, if you know?

A. It must have been along in the fall of the year, early in the fall.

Q. Now, do you recall during the early part of the week of his discharge, whether or not he had been absent from his work? A. Yes, sir.

Q. And what was it for? Had he been absent, and if so, how long, and when?

(Testimony of Earl H. Brown.)

A. It seems to me that we was supposed to work Sunday, and he didn't show up Sunday or Monday?

Q. Did he show up on Tuesday?

A. It seems to me that he was off two days, and I don't know whether it was Sunday and Monday, or Monday and Tuesday. It seems to me that it was Sunday and Monday that he didn't show up.

Q. What was the condition of the work in the shop at that time? [1160]

A. Well, we most generally had all that we could handle with the three of us. We was always busy in the shop.

Q. Did he make any comment to you then as to why he had missed those days?

A. No, sir; not that I recall.

Q. Had Mr. Archibald ever said anything to you about being a member of a labor union?

A. No, sir.

Q. Did you know whether or not he was a member of any labor union? A. No, sir.

Q. Had that matter ever been discussed between you and Mr. Archibald? A. No, sir.

Q. Had his membership in any labor union organization ever been discussed by you or anyone else? A. Not that I ever recall.

Q. Did you know whether or not he was a member of any union? A. I did not.

Q. And you worked right alongside of him during the entire summer? A. Yes, sir.

(Testimony of Earl H. Brown.)

Q. Now, when there is work done in one of these tanks or transports, what arrangements are previously—what preparations is previously made for the men working in them? [1161]

A. When they go in to weld them, you mean?

Q. Yes.

A. They put them on steam and steam them out, and then they have an analysis to see if there is any poisonous gas or anything in them before starting work in them. Then they put them in the garage and put a blower in them to blow the fumes out. We had a portable blower then. We have different kinds now. At that time, we had a portable blower, and it blew the fumes and smoke and everything out, and keep the air circulating.

Q. Was that blower that blew the fumes out in use at the time Archibald began service with the company?

A. Yes, sir.

Q. And continued during the entire period of time that he was there?

A. Yes, sir.

Q. And with that arrangement, what is the fact as to whether or not there could be any fumes that would effect a man?

Mr. Penfield: I object to that as calling for a conclusion.

Trial Examiner Riemer: It is obviously a conclusion, but I will permit it to be answered. Read the question to him, Mr. Reporter.

(Question thereupon read aloud by the reporter as hereinabove recorded.)

(Testimony of Earl H. Brown.)

A. There is always smoke fumes from the welding rod, regardless of where you are, but working under a blower, your conditions are [1162] really better than there are at any other time because it is blowing them out and circulating the air.

Q. Have you ever worked in the tanks?

A. Yes, sir; I have been in them and worked with them. I am not a welder.

Q. What work do you do?

A. Help them, maybe cutting out a patch, something like that.

Q. Did you work alongside of the welder?

A. Yes, sir.

Q. At the same time that he was working?

A. Yes, sir.

Q. Did any fumes annoy or affect you?

A. No, sir.

Mr. Merrill: I believe that is all.

Trial Examiner Riemer: Mr. Penfield, you may cross examine.

Cross Examination

Q. (Mr. Penfield) How many mechanics did you have at the time that Mr. Archibald worked there? A. There was three.

Q. That is including yourself?

A. Yes, sir.

Q. Who was the other one? A. Sir?

Q. Who was the other one?

A. Bud Boyer. [1163]

Q. Was he there during the entire time that Mr. Archibald worked there?

(Testimony of Earl H. Brown.)

A. No, he didn't come until after Mr. Archibald did, for a while; I don't remember just how long.

Q. Do you know Oran Thomas?

A. Oran Thomas, yes, sir.

Q. Did he work there? A. Yes, sir.

Q. Is he a mechanic? A. Yes, sir.

Q. When did he come? I want to straighten that up.

A. It seems to me like along in the middle of the summer, along in August.

Q. Did Boyer leave then?

A. I believe that Boyer had gone before that.

Q. I see.

A. Mr. Archibald was there, and Thomas and myself and then after Boyer left, but I don't know how long—the date.

Q. Was the work pretty steady?

A. Yes, sir.

Q. You don't have periods where you don't have much work? A. Never have had.

Q. When did you first observe Mr. Archibald was not reporting to work, as you testified?

A. Well, he would lay off at different times and say that he [1164] was sick, but I didn't know—

Q. When was this? How long after he came to work there?

A. A couple or three months after he started to work, but I didn't know why, or what; as I say, I was never out with him.

(Testimony of Earl H. Brown.)

Q. So far as you know, he was actually sick, was he?

A. He was sick out there some mornings, yes, sir.

Trial Examiner Riemer: There seems to be a delicacy on the part of both counsel to avoid mentioning the word "liquor" or the condition of drunkenness. I wish that you would avoid any nicety about it. Let's break it down and find out now, whether the man was sick from some other cause, or just drunk.

Q. (Mr. Penfield, continuing) Well, you testified that on a number of occasions, he reported to work and he was sick? A. Yes, sir.

Q. Was he sick or drunk, if you know?

A. I don't know what would cause it. I couldn't say.

Q. I asked the question——

A. I couldn't answer it that way, because I never saw the man take a drink, and I don't know what you would call a drunk man. If a man is able to walk when he was drunk, he was able to walk on the job.

Q. Was he drunk or wasn't he? Or was he sick, do you know?

A. I would say that he had been drinking.

Q. You don't actually know, then?

A. I don't actually know whether it is what you would term as [1165] drunk.

Q. You knew, as a matter of fact, that he was

(Testimony of Earl H. Brown.)

suffering, had been under treatment for ulcers for some time, did you not?

A. No, sir; he never told me that.

Q. You stated that he complained he had been working too hard, did you not? A. Yes, sir.

Q. He did work pretty hard, didn't he?

A. He did at first, yes, sir.

Q. Did you not work pretty long hours out there? A. Yes, sir.

Q. All the way through his employment, didn't Mr. Archibald work pretty steadily, except for these few occasions when he was sick or drinking, you don't know which?

A. He worked all day, yes.

Q. And he would work longer than that, sometimes, wouldn't he?

A. He got so he wouldn't take on any more of that.

Q. Do you know the hours that Mr. Archibald worked during the time that he worked there?

A. Not altogether, no, sir.

Q. You have no idea how many hours he put in during each payroll period, is that right?

A. No, sir. I never kept track of the time.

Q. Would you say that it is not true that Mr. Archibald [1166] average 9-1/2 hours during the period he worked there?

Trial Examiner Riemer: Don't answer the question, Mr. Witness.

Mr. Merrill: Objected to as——

(Testimony of Earl H. Brown.)

Trial Examiner Riemer: Just reframe the question. You have a double negative in there.

Mr. Penfield: All right.

Q. (Mr. Penfield, continuing) Isn't it possible, Mr. Archibald could have worked an average of 9-1½ hours a day on a 7-day week during the period he worked there? A. Yes, sir. [1167]

Q. Was there any—you say that your work is pretty steady. Did it continue steady after November the 14th? A. Yes, sir.

Q. After Mr.—did you get a new mechanic after Mr. Archibald was discharged?

A. We had this Mr. Thomas who came before that. We have had two mechanics since then, two men. [1170]

Redirect Examination

By Mr. Merrill:

Q. Mr. Brown, did Mr. Archibald work any longer hours than any other employee there?

A. No, sir.

Q. Did he work any longer than you did?

A. No, sir.

Q. Did he work as long? A. No, sir.

Q. Did he work as long as Mr. Thomas worked?

A. No, sir.

Q. And as I understand, in all instances, where he worked over his 40 hours a week, he got time and a half for overtime? A. Yes, sir.

Q. Did you ever observe Mr. Archibald's welding operations? A. Yes, sir.

(Testimony of Earl H. Brown.)

Q. Did you ever see him burn a hole through a tank? A. Yes, sir.

Q. Explain that situation.

A. Well, I had worked that day and came back out in the evening and he had been called to come out to weld a tank, and he get [1172] in the tank and he burned a hole, a long place in this tank when he started to weld it. I didn't know who was in the tank or anything about it at the time, but I saw the hole come in the tank, and saw the stinger come out through there, and later, the shop foremen went up and stopped him and told him to come out, and they would let it go at the time, and after he left, the shop foreman went in and welded the tank.

Q. Welded the hole that he had made?

A. Yes, sir; and the others, he didn't get done at the time. I didn't pay no attention to it at the time until after they welded the tank up. He wasn't in very good shape the night he came out.

Q. You mean that he was apparently under the influence of liquor? A. Yes, sir.

Trial Examiner Riemer: Is that what you mean?

The Witness: Yes, sir.

Mr. Merrill: I believe that is all.

Recross Examination

By Mr. Penfield:

Q. When was the occasion, the day that he burned the hole in the tank?

A. Well, it was in the evening. I don't know the day.

(Testimony of Earl H. Brown.)

Q. About what date?

A. About what date?

Q. Yes. [1173]

A. Well, I couldn't say because we do that stuff over and over again so much and I really didn't pay attention to the date, or anything like that.

Q. Did you talk with Mr. Archibald that night?

A. Just for a minute when he came out, when he got out of the tank. He said that he was going to take off.

Q. You don't know whether he was drunk or not, do you?

A. He wasn't in very good shape. I would say that he had been drinking.

Q. How did you know?

A. I could tell by the looks of his face that he had been drinking, or there was something else wrong with him.

Q. Something might have been wrong with him.

Mr. Penfield: I believe that is all.

Trial Examiner Riemer: Is there anything further?

Mr. Merrill: That is all.

Trial Examiner Riemer: Mr. Brown, during the period between January and November of 1941,—that covers almost 12 months,—did you have occasion during that time to work on Sundays?

The Witness: To work on Sundays?

Trial Examiner Riemer: That is right.

The Witness: Yes, sir.

(Testimony of Earl H. Brown.)

Trial Examiner Riemer: How frequently did you work on Sunday? [1174]

The Witness: Well, we was to take turnabout. We tried to work every other Sunday.

Trial Examiner Riemer: During the course of an average month, which has four weeks, how many Sundays would you work?

The Witness: Well, we wouldn't work all day. We would just go out when we had to for maybe two hours or one hour, or sometimes four hours.

Trial Examiner Riemer: How many Sundays during the month would you go out for that short shift?

The Witness: Oh, I would say two.

Trial Examiner Riemer: Had you any idea—I will give you a moment to think about it—how many days, including Sundays, you were off between January and November of 1941?

I will show you a calendar.

The Witness: How many days I was off?

Trial Examiner Riemer: That is right.

The Witness: No, I wouldn't know. I was off two weeks on a vacation.

Trial Examiner Riemer: Let's not include that.

The Witness: Well, I would be off different times when I would get overtime enough in. I would be tired and I would lay off for a day. If work was slack in the middle of the week, I would take a day off.

Trial Examiner: When you accumulated over-

(Testimony of Earl H. Brown.)

time and you were tired, did you secure permission before you laid off? [1175]

A. That was understood, if we had our over-time in, our full week in, we didn't have to, it wasn't necessary for us to come back.

Trial Examiner Riemer: Did you ever combine that day with a Sunday to get two days together?

The Witness: Yes, sir.

Trial Examiner Riemer: Would you say that you did not work—wouldn't report at all for work on at least two Sundays out of every month?

The Witness: I believe that I would average something like that.

Trial Examiner Riemer: So that between—strike that, Mr. Reporter. Did you work any more frequently on Sunday than Mr. Archibald did?

The Witness: Yes, sir.

Trial Examiner Riemer: How about Thomas, after he came on the job, Oran Thomas?

The Witness: Well, if you don't mind me stating on this: I had been there longer than these other fellows, Mr. Archibald and the other fellows, and knew the equipment better, and naturally, on over hours or Sundays, they would call me, because I knew what it was; and take a new man, it would take him longer because he would have to find out what was wrong on some occasions, not all of them—not that one man is better than another, but I had been there longer and knew what would break on them. [1176]

(Testimony of Earl H. Brown.)

Trial Examiner Riemer: Does that account for the fact that you worked more frequently on Sundays?

The Witness: Yes, sir.

Trial Examiner Riemer: And because of the fact that you had had more experience, and were more familiar with the equipment?

The Witness: That is it.

Trial Examiner Riemer: You could exercise greater judgment and discretion due to your familiarity?

The Witness: I was more familiar with it, yes, sir. I had been there longer, and had been through the motors more. [1177]

RESPONDENT'S EXHIBIT No. 6

IDAHO REFINING COMPANY

Condensed Balance Sheet—As of October 31, 1941

Assets:

Cash on hand and in bank	
(overdraft)	\$ 312.17*
Receivable Items, Net after reserves	261,435.52
Merchandise Inventories on Hand	137,048.59
<hr/>	
Total Current Assets.....	\$ 398,171.94
Receivables Due after One Year.....	326,150.00
Prepaid Expenses and Other Deferred Charges	92,167.90
Fixed Assets, Net After Reserves.....	596,373.67
<hr/>	
Total Assets	<u><u>\$ 1,412,863.51</u></u>

Liabilities and Capital:

Notes and Trade Acceptances

Payable	\$291,901.20
Accounts and Contracts Payable....	290,439.52
Accrued Taxes Payable	85,313.84
Accrued Payroll Payable	7,929.34
Accrued Interest and other payable items	4,659.54

Total Current Liabilities\$ 680,243.44

Notes Payable not due until after

one year\$ 93,365.57

Contracts Payable—Portion Due

After one Year 2,717.05

Total Liabilities Due After One Year..... 96,082.62

Capital Stock Subscribed and

Outstanding\$595,480.00

Surplus 41,057.45

Capital and Surplus 636,537.45

Total Liabilities and Capital\$ 1,412,863.51

* Figures in red.

HARRISON JONES

previously sworn as a witness by and on behalf of Respondent, was recalled and further testified as follows:

Trial Examiner Riemer: You are the Harrison Jones who has been previously sworn, identified and interrogated as a witness by the respondent?

[1182]

The Witness: Yes.

(Testimony of Harrison Jones.)

Direct Examination

By Mr. McKay:

Q. You are an employee of the Covey Gas & Oil Company? A. Yes.

Q. What is your position?

A. I have charge of the accounting of the Covey Gas & Oil.

Q. Where are your offices?

A. At the Refinery.

Q. Will you state where your office is in relation to the office of the employees of the Idaho Refining Company?

A. Well, the building is an "L" shaped building, and a wing on the back, and our office is in the extreme end of the "L" and the refinery office is in front. There is a wall between.

Q. Do you know the mechanics of the discount given by the Covey Gas & Oil Company to purchasers of gasoline? A. Yes.

Q. Will you tell us how that is handled?

A. Well, anyone working for the Idaho Refining Company is entitled to a discount providing the purchase is made at our Covey station in Pocatello, and they make the purchases and we record them and set up ledger sheets for each individual during the month, and twice a month, we make a list of the employee's purchases and give to the refinery. [1183]

VALERIE PRIMBS

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: What is your name?

The Witness: Valerie Primbs.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Direct Examination

By Mr. McKay:

Q. You are an employee of the Idaho Refining Company, Miss Primbs? A. Yes.

Q. What is your specific duty?

A. I am office clerk.

Q. You have charge of the payroll records?

A. Yes.

Q. And you make out the checks each time that they are made out? A. Yes. [1188]

Q. I show you Board's Exhibit No. 20, and ask you whether you see at the top of that several columns under the word "Deductions"?

A. Yes.

Q. Now, under the column which is marked "EBA", do you know what you put under there, or where you got the information which you put down there?

A. Deductions are given to me by the secretary or treasurer, I don't know which he is, of the Association. He gives me the list.

Q. And the figures that you put under the column marked "Purchases"?

(Testimony of Valerie Primbs.)

A. That is gasoline deductions for gas, oil and tires.

Q. Where do you get that information?

A. From the Covey Gas & Oil Company. They give me the list.

Q. Is there any deduction for gasoline, oil and tires placed under column marked "EBA"?

A. No.

Q. Did you make out the checks for the drivers who were discharged? Did you make out any checks on November 14?

A. Yes.

Q. Do you remember what time of the day you started making out those checks?

A. As soon as I got to work in the morning.

Q. What time did you get to work in the morning? [1189]

A. Eight o'clock.

Q. I will ask you to look at certain cards marked individual labor tickets, Idaho Refining Company, Respondent's proposed exhibit No. 7, and state on what days Wayne Douglas was working as shown by those cards?

A. October 2, 5, 6, 7, 15, 29, and 30th.

November 1, 2, 3, 5, 6, 7, 9, 10, 11, 14 and 15.

Q. I will ask you whether those cards show all the days on which Wayne Douglas worked between October 2 and November 15?

A. Yes.

Q. As shown by all the payroll records in your office?

A. Yes, between October and November 15th.

Mr. McKay: That is all.

(Testimony of Valerie Primbs.)

Cross Examination

By Mr. Penfield:

Q. Do I understand that you were the payroll clerk for the Idaho Refining Company?

A. Yes.

Q. How long have you held that position?

A. Around three years.

Q. I show you Board's Exhibit 16-A, and ask you if this is a typical sheet which you receive twice a month from the secretary of the Association?

A. Yes, it is.

Q. You receive those twice a month, do you not?

A. Yes. [1190]

Q. Then what do you do?

A. I enter these on their time sheets and make the deductions from their checks at the refinery.

Q. What do you enter, do you enter the amount of the total?

A. The total amount.

Q. On the time sheets of each of the individuals named?

A. Yes.

Q. When are you given these sheets, normally?

A. Just before each pay period.

Q. What are your pay periods?

A. The pay periods end on the 15th and the last day of the month, and that is when I get the deductions, right after the pay periods.

Q. And the actual checks are given on the 5th and 20th?

A. 5th and 20th.

Q. And you work on these during the time in between?

A. Yes.

(Testimony of Valerie Primbs.)

Q. About how much time do you spend on each one of those sheets? A. On each sheet?

Q. Well, I mean to say, you get them twice a month, the whole thing, and about how long does it take to make these entries?

A. To enter these deductions on the time sheets, just a matter of a few minutes.

Q. How do you do it? [1191]

A. I take the amounts from these sheets and put them on each individual's payroll sheet—time sheet.

Q. What sort of sheets do they have?

A. They are records of the hours they worked each day of the period.

Q. Do you copy that down with a machine?

A. No, it is all done by hand.

Q. You just copy off the names? A. Yes.

Q. What do you mean by a few minutes, you have to copy down all of those?

A. Well, five or ten minutes to enter these deductions.

Q. For sixty or seventy people?

A. Eighty—around there.

Q. Eighty people. What are these parts that you have in your hand marked as Respondent's Exhibit 7 for identification?

A. They are the individual labor tickets for each day.

Q. Now, who makes these out?

A. The person doing the work, and they are okehed.

(Testimony of Valerie Primbs.)

Trial Examiner Riemer: You mean the employee?

The Witness: The employee.

Q. (Mr. Penfield, continuing): The truck driver, in the case of Wayne Douglas?

A. The truck driver.

Q. Who are they given to? [1192]

A. They are given to the foreman, the fellow in charge of the truckdrivers.

Q. Then when do you receive them?

A. The foreman gives them to me.

Q. In the case of Mr. Stiff, how was that handled?

A. Mr. Stiff sent them in to the office, and then they were handed to me later.

Q. I believe that you testified that there were cards up to the 15th of November? A. Yes.

Q. Isn't this a card for the 16th of November?

A. I started there, and I was interrupted, and he only asked me through the 15th.

Q. But this is a card for the 16th? A. Yes.

Q. And this one for the 17th? A. Yes.

Q. And this one for the 18th? A. Yes.

Q. And this one for the 19th? A. Yes.

Q. And this one for the 20th? A. Yes.

Q. So Mr. Douglas worked through the 20th as far as these cards show, is that correct? [1193]

A. Yes.

Mr. Penfield: I believe that is all.

(Testimony of Valerie Primbs.)

Redirect Examination

By Mr. McKay:

Q. I didn't mean to interrupt you, I thought that you had finished? A. No.

Q. What was the last day that Mr. Douglas worked, as shown by the cards?

A. I believe that it was the 20th. Do you have the cards, and I will tell you? November 20.

Q. What day was Mr. Douglas paid?

A. What was that?

Q. What day was he paid?

A. I wouldn't know without looking at the records.

Q. The cards don't show that? A. No.

Mr. Penfield: Counsel, do you mean ordinarily paid, or the last time that he was paid?

Mr. McKay: The last time that he was paid. That is all.

Trial Examiner Riemer: Mr. Penfield?

Mr. Penfield: No further questions.

Trial Examiner Riemer: The witness is excused.

Mr. McKay: We are not offering those cards unless you want them.

(The cards referred to, which have [1194] heretofore been identified as Respondent's Exhibit 7 for identification, were not offered and were left in the custody of the witness.)

Mr. Merrill: I will call Kermit Rice.

(Witness excused.)

KERMIT RICE

was thereupon called as a witness by and on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: Kermit Rice.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Direct Examination

By Mr. Merrill:

Q. What is your present occupation, Mr. Rice?

A. Superintendent of transportation.

Q. For whom are you working?

A. Idaho Refining Company.

Q. How long have you been working for the Idaho Refining Company?

A. I believe that it was September 7, 1938.

Q. Where did you live prior to that time?

A. Pocatello.

Q. You have lived in Pocatello for how long, approximately?

A. Since 1935, sometime around there.

Q. When you commenced working for the Idaho Refining Company [1195] was it at its plant here at Pocatello?

A. Yes.

Q. Have your services for the Idaho Refining Company been continuously here in Pocatello?

A. Yes, sir.

Q. What was your position when you first commenced working?

(Testimony of Kermit Rice.)

A. Well, I did mechanical work on the trucks, and I did the hiring and firing of the drivers.

Q. Drivers of what?

A. Of the transports of the Idaho Refining Company.

Q. In the beginning, this was a very small shop, I believe? A. Yes.

Q. How many trucks did the company have to begin with? A. Four.

Q. How many does it have now? I mean transport trucks that haul gasoline out along the road out of the refinery?

A. You mean the tank units?

Q. Well, do you have trucks in addition to what you call the tank units, I mean that haul gasoline from the refining plant to stations?

A. Well, I did have a spare or two.

Q. Well, do you have one now?

A. Well, no, not all of them. We have—I believe it is 16 trucks and trailers.

Trial Examiner Riemer: 16? [1196]

The Witness: Yes, sir.

Q. (Mr. Merrill, continuing) What percentage of those are in use?

A. Well, all of those tanks are used.

Q. How many tanks do you have now?

A. You mean semi-trailers and full trailers and trucks and trailers?

Q. Yes.

A. I believe that is 16.

Q. Now, are you a mechanic yourself?

(Testimony of Kermit Rice.)

A. I worked at it for a number of years, yes, sir.

Q. Belong to a labor union? A. Yes, sir.

Q. What union?

A. It is the international Association of Machinists.

Q. What number Local?

A. I don't recall what Local it is. I have a Journeyman's retirement card.

Q. Is it located here in Pocatello? A. Yes.

Q. Have you had any actual activities here in Pocatello with the Union of which you were a member? A. Yes, sir.

Q. What?

A. Well, I was a member for a long time.

Q. A charter member? A. Yes, sir. [1197]

Q. Assisted in its organization?

A. Yes, sir.

Q. And have maintained the status of a member ever since? A. Yes.

Q. Does the Idaho Refining Company maintain a garage or work shop on its property here near Pocatello? A. Yes, sir. [1198]

Q. Now, do you know a man by the name of Leo Archibald? A. Yes, sir.

Q. When did you first become acquainted with him?

A. I hired him some time in January, I believe it was, in 1941.

Q. And in what capacity did he work?

A. As a truck mechanic.

Q. Did he have anything to do with welding?

(Testimony of Kermit Rice.)

A. Yes, sir.

Q. What part of his time during the period of time he worked for you was devoted to welding, and what parts to other mechanical work if you can segregate it?

A. Well, there were some days he never did do any welding at all. [1200]

Q. Was welding a major or minor part of his service?

A. Well, welding was, you might say, a minor part of the service that had to be taken care of.

Q. When there was no welding to do, then you mean that he was doing other things?

A. Yes.

Q. In a mechanical way? A. Yes, sir.

Q. Now, will you advise the character of the work he did and his general attitude towards his work?

A. Well, when he first came to work for me, he started out—worked pretty well—that is what I mean—he did his work well and he was fast. That is, he wasn't especially fast,—he did a good job. But as time went along, he got slower every day we went along, it seemed to me as though.

Q. Did you ever have reason to criticize his work? A. Yes, sir.

Q. Advise us, please.

A. Well, there were numerous occasions I told him that he would have to hurry up, that we had to get the trucks out, and get them out on the road.

Q. Why did you tell him that?

(Testimony of Kermit Rice.)

A. Well, he was so slow—he got to be so slow.

Q. Did he make any comment to that?

A. Sometimes he did. [1201]

Q. Do you recall any reason that he gave for being slow? A. No, sir.

Q. What have you to say as regards his habits as to whether or not he would appear on the work under the influence of intoxicating liquor?

A. Well, I understood he had quite a bad habit of drinking.

Q. Had you observed him on the job when he was under the influence of intoxicating liquor?

A. Well, I saw him once when he couldn't hardly get out of the shop—the door. It is 15 feet wide.

Q. Was he drunk or not at that time, in your opinion?

A. In my opinion, he was under the influence of liquor.

Q. When was that?

A. It was sometime in June.

Q. What time did he come to work that day?

A. He had come in the morning to work.

Q. How long did he remain?

A. Well, he went home about five o'clock; then I called him back.

Q. That day? A. That evening.

Q. Did he work all day drunk? A. No, sir.

Q. I am directing your attention to the day you said you saw him when he was under the influence of liquor so that he could [1202] hardly get out the door; what day was that?

(Testimony of Kermit Rice.)

A. That was the night that he burned the hole in the tank for me.

Q. Do you remember the time?

A. You mean that he was out there?

Q. The day that you say that he was drunk as you have described, what date was that, Mr. Rice?

A. Well, as to the exact date, I am not positive. It was sometime in June, 1941.

Q. All right. Describe him a little more fully that day, and what he did, what he said, and what you said to him.

A. Well, this trailer had been steamed and was in the shop under the blower, and he had gone home, and I called him back out to weld it.

Q. What time did he come back out?

A. I wasn't there when he got there. I had gone home to supper, when he got there; but when I came back, he was in this tank, working on it, and had burned this hole, burned this hole through the floor of it.

Q. Whereabouts was the hole burned with reference to where he would he would have been working with his torch?

A. It was about four inches from where he should have been welding.

Q. What kind of a hole was it that was burned in the tank?

A. Just a small, jagged hole about $\frac{3}{8}$ of an inch in diameter. [1203]

(Testimony of Kermit Rice.)

Q. What was the cause of the hole being burned, if you know, was it deliberate or careless, or what?

A. Well, it was from pulling his arc too long an arc away from his weld.

Q. Did you call his attention to it?

A. Yes, sir.

Q. What did you say to him?

A. I told him after he had got out of the tank that I couldn't stand for any more of that kind of work at all, and if he ever came out there again under the influence of intoxicating liquor, he would be—I would be forced to let him go.

Q. What did he say?

A. I don't believe that he said anything at all.

Q. Did he leave then for home that night?

A. Yes, sir.

Q. What did you do then?

A. I welded the tank back in.

Q. How long did it take you to repair that hole?

A. Oh, to repair the hole he burned in there, didn't take probably over 15 or 20 minutes.

Q. What other work did you have to do that he should have done?

A. I had to cut all of his old weld out of the bottom of the tank and replace it.

Q. Why?

A. It still leaked where he welded it. [1204]

Q. That was due to what cause?

A. Not holding a steady arc in there, or flowing the metal in even.

(Testimony of Kermit Rice.)

Q. Now, at that time, were there any fumes in the tank that were obnoxious to you?

A. There were no fumes in there when I was in there.

Q. How was that tank handled to prevent fumes?

A. You mean from the electrodes?

Q. Well, any kind of fumes?

A. Well, the tank had been steamed previous to the time that it was put under this blower.

Q. When was the blower installed for use in tanks in the plant with reference to Archibald's work?

A. Clifford Neff and I built it sometime in 1939.

Q. That was before Archibald came?

A. Yes, sir.

Q. What is the fact as to whether or not there was a blower to eliminate the fumes during all the period of time that Archibald was there, or only a part?

A. The blower was always there.

Q. What other instances do you recall of Archibald coming to work off time or under the influence of liquor?

A. Well, there was one morning when I missed him, and I never did know where he was until I went home that night, and he had been sitting in the car outside the fence all day. [1205]

Q. How did you learn that he had been doing that?

A. I happened to see him when I went home.

Q. Did you say anything to him?

A. No, sir; not that night.

(Testimony of Kermit Rice.)

Q. What was the fact, had he been missed all day?
A. Yes, I didn't know where he was.

Q. Did you see him come to work that morning?
A. Yes.

Q. Did you observe anything unusual with him?

A. Well, he looked like he had been out all night.

Q. Did you say anything to him?

A. No, sir.

Q. Now, what other instance of dereliction did you observe with him?

A. Well, there was one day just before I let him go that he was—said he had been—said that he had the bellyache—he came to work.

Q. When was that, if you remember?

A. That was the Monday before I let him go.

Q. How long was he off work then?

A. He was off work that day, and I don't believe that he worked the day before that. That was on a Sunday—Sunday and Monday, I don't believe he worked. He didn't work either of those days.

Q. Did you criticize him? [1206]

A. Yes, sir.

Q. What did you say to him?

A. I told him that I just couldn't stand that kind of carryings on any more at all.

Q. What did he say?

A. I don't recall whether he said anything or not—he——

Trial Examiner Riemer: Excuse me for interrupting. What day was Archibald discharged?

Mr. Merrill: On the 13th.

(Testimony of Kermit Rice.)

Mr. Leicht: The 14th.

Mr. Merrill: The 13th was the last day that he worked.

Mr. Leicht: Yes, the 13th was the last day he worked. He was discharged at 8:00 o'clock on the morning of November 14, 1941.

Trial Examiner Riemer: Thursday was the 13th. Friday he was at work?

Mr. Leicht: He came to work on Friday and never started to work.

Mr. Merrill: I assume so.

Q. (Mr. Merrill, continuing): Do you know the day of the week that he worked last?

A. The day of the week?

Q. Yes.

Trial Examiner Riemer: Here is a calendar, Mr. Rice.

A. You want to know the day of the week that he worked last? [1207]

Mr. Merrill: Yes.

A. The last day that he worked would be the 13th of November.

Q. (Mr. Merrill, continuing): What day, Friday, Wednesday, or what?

A. It would be Thursday.

Q. Now, did he work Monday and Tuesday of that week? A. He did not work Monday.

Q. Do you know whether he worked Tuesday?

A. I believe he did.

Q. Yes. Now, I want you to go back a little bit;

(Testimony of Kermit Rice.)

do you remember the incident when you went back to New York or back East to get a truck?

A. Yes.

Q. Who looked after the work that you had previously been doing, when you were gone?

A. Mr. Earl Brown.

Q. When you got back, was there any report made to you as to the conduct of Archibald?

A. Yes.

Q. What was the report, and by whom was it made?

A. Mr. Brown told me that he had came out there after the Fourth of July and was unable to work and from his observation that he was under the influence of liquor.

Q. Did Mr. Brown say anything else as to what should be done—any corrective measures? [1208]

A. Not to me, I don't believe that he did.

Q. Now, there are other instances of dereliction on Archibald's part—I mean lack of doing his work right or reporting to work?

A. Well, he got awfully slow—it would take him six hours to do a two-hour welding job.

Q. When did that occur?

A. That was several times on tank jobs.

Q. Did he get worse as time went on in that respect?

A. Yes, sir.

Q. What was his method of doing his work towards the latter part of October and November?

A. Well, I would put him on a job and he would just stay there as long as he possibly could.

(Testimony of Kermit Rice.)

Q. Did you criticize him in any way?

A. Yes.

Q. What did you tell him?

A. I told him that he was too slow, and that he had to whip up.

Q. What did he say?

A. I believe the only thing he ever did say was "I will try".

Q. Did you ever talk with him about his habit of drinking—getting drunk? A. No.

Q. Did you ever criticize him for that, tell him anything about [1209] it?

A. I told him that he would have to be in shape when he came to work out there for me.

Q. Did you use any expression touching liquor or drinking—drunkenness?

A. I don't never recall it.

Q. With respect to working hours, of the mechanics, explain what they are, and how the men are devoted to their work?

A. Well, when a mechanic is hired, he is told that he is on call 24 hours a day, regardless of whether it is Sundays, holidays or Christmas. If they have to have some work, he goes to work with the understanding that he will come to work whenever he is called.

There is no set time for him to report to work. He is liable to be called at five or six o'clock in the morning, or after he is through working, he has to be willing to be called back to work.

Q. Why is that necessary?

(Testimony of Kermit Rice.)

A. Our equipment is never stopped. We run it day and night as the work comes in. They have to go back out. We can't tie them up. [1210]

Q. Now, when was Archibald discharged?

A. On the morning of the 14th.

Q. Explain the incident, please?

A. Well, I just walked up to him and explained that our work had slowed up considerably, and that his work was unsatisfactory and that I just wouldn't need him any more.

Q. What did he say?

A. He just says, "All right".

Q. What time of day was that?

A. That was just before eight o'clock in the morning.

Q. Who was present at that time?

A. I believe Mr. Thomas and Mr. Nord was in the shop at that [1211] time.

Q. Were they there with you when you were talking to Archibald or were they in some other place?

A. As I recall, Thomas was standing right close by. I walked right over to him and told him to take my truck and haul this man's tools home for him.

Q. That was after you had mentioned the discharge to Archibald?

A. Yes, sir.

Q. At the time that you told Archibald that you were through with him, or that you would not need his services any longer, did he make any comment to you—did he say anything back to you?

(Testimony of Kermit Rice.)

A. No, sir.

Q. Had you ever discussed with Mr. Archibald the subject of belonging to any labor union?

A. No, sir.

Q. Did you know that Mr. Archibald was a member of a labor union? A. No, sir.

Q. Did he ever say anything to you, or you to him, about the joining of a labor union?

A. No, sir.

Q. Did you ever tell him at any time that you had belonged to a labor union, but that it hadn't done you any good? A. No, sir. [1212]

Q. At the time of his discharge, what is the fact as to whether or not you knew anything about his labor affiliations or union affiliations?

A. I knew nothing.

Q. Did his membership in a labor union or his activities in behalf of a labor union, if any such existed, have any influence or effect upon you, or was that a cause for his discharge?

A. No, sir.

Q. Did you have any information of any such activities at the time of the discharge?

A. No, sir.

Q. At the time that you told him that his services would be no longer required, did you say anything to Archibald about the fact that you were laying him off because he had been getting drunk?

A. I don't recall telling him that.

Q. At that time, did Archibald say to you in

(Testimony of Kermit Rice.)

substance or effect in reply to your advice that he was no longer needed, "I guess you know why"?

A. No, sir.

Q. Since his discharge, has he been back to the plant? A. Yes, sir.

Q. Have you talked with him?

A. No, sir. [1213]

Q. Do you know why he came back?

A. As I recall, he had left, I believe, a ridging tool out there and came back for it.

Q. Did Archibald ever say anything to you about the truck drivers' union? A. No, sir.

Q. Or memembers in it? A. No, sir.

Q. Did you know of any activities that he professes to have engaged in with reference to this union? A. No, sir.

Q. Did the management of the Idaho Refining Company have anything to do with the discharge of Archibald? A. No, sir.

Q. That was a matter that you assumed entirely, yourself? A. Yes, sir.

Q. Why was it that you let him go on the morning of the 14th of November, 1941, rather than at any other time?

A. Well, we caught up on our work, and I just couldn't stand his work any longer that he put out, or his habits that he had.

Q. Did you have applications bh anyone else for work as a mechanic at that time? A. Yes, sir.

Q. Who?

(Testimony of Kermit Rice.)

A. There was a man by the name of Schroeder.
[1214]

Q. And where was he working at that time, if you know? A. Mr. Schroeder?

Q. Yes.

A. He was working for Bannock County.

Q. Did you subsequently employ him?

A. Yes, sir.

Q. When?

A. It was on November 20, 1941.

Q. And then did you have anyone that took Archibald's place between November 14 and November 20? A. No, sir.

Q. Who did the work in the garage during that period of time?

A. Oran Thomas and Mr. Brown and Clarence Bergman, Wayne Nord and myself.

Q. Were they all working there then?

A. Yes, sir.

Q. Mr. Rice, were you ever at any time, or are you, opposed in any way to labor unionism?

A. No, sir.

Q. Has the management, so far as you know, any officer of the company, ever expressed to you any disapproval of labor unionism? A. No, sir.

Q. Has there ever been any interference or suggestions one way or another touching labor unionism to you? [1215] A. No, sir.

Q. Have you ever made any discrimination in the hiring of union men or non-union men?

A. No, sir.

(Testimony of Kermit Rice.)

Q. Would the fact that they belonged to a union make any difference if they sought employment with you? A. No, sir.

Q. Would they be hired, just the same if they met other requirements? A. Yes, sir.

Q. Why was it that you didn't lay Archibald off before the morning of the 14th of November, 1941?

A. I had a little work that I was trying to get out, get caught up with.

Q. Did you get caught up with it?

A. Yes, sir.

Q. When did you first determine that you would let Archibald go?

A. Well, I fully made up my mind this Monday previous to his dismissal.

Q. That is the Monday that he didn't turn up for work?

A. The Monday he came out and couldn't work.

Q. That was the Monday of the week in which he was dismissed? A. Yes, sir.

Q. And did you mention the fact to him at that time? [1216] A. Yes, sir.

Q. And what did you tell him?

A. I told him that I couldn't stand for that kind of carryings on any more.

Q. What did he say?

A. Well, he just says, "I got the bellyache".

Q. What did you say to that?

A. I says, "You are not any good out here. you had just as well go home."

(Testimony of Kermit Rice.)

Q. Anything further? A. No, sir.

Q. Did you know that the equipment of the Idaho Refining Company, the rolling equipment, was covered by insurance? A. Yes, sir.

Q. Did you know what companies carried this insurance? A. I did not.

Q. Did the matter of the wrecks of equipment, and the accidents sustained by the drivers come to your attention? A. Yes, sir.

Q. In what way, Mr. Archibald?

A. Well, from the insurance company—
Trial Examiner Riemer: Speak up, please.

A. From the insurance company.

Q. (Mr. Merrill, continuing): Who would give you that information? [1217]

A. Mr. Rube Turner.

Q. On more than one occasion?

A. Yes, sir.

Q. What did he say to you?

A. He said that if the accidents kept on continuing, the first thing we knew, we would have a cancellation of our insurance policy, and it would be awfully hard to replace it.

Q. How many times did Mr. Turner tell you that? A. On several times.

Q. Was that to you privately or when others were present or both?

A. Privately, I think, is the only time that he ever told me.

Q. What did you do in response to those statements, if anything?

(Testimony of Kermit Rice.)

A. I told the drivers that they would have to be more careful, told them what the conditions were, what would happen.

Q. How often did you tell the drivers that?

A. They were told every time that we had an accident.

Q. How many accidents occurred during the summer and fall of 1941 up to November 14, if you know? A. I don't know.

Q. When the accidents would occur, what would be done with the trucks, would they be brought into the place for repair, or be repaired elsewhere?

A. Sometimes they were brought in, sometimes they were repaired [1218] in other shops.

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Q. (Mr. Merrill, continuing): Would all accidents be reported to you, or just those that came into your shop?

A. No, they were all reported to me.

Q. And when an accident was reported to you, what did you do?

A. You mean after it happened, is that what you mean?

Q. Yes, when you would get the report of an accident, would you say anything or do anything, or what?

A. Well, I would call the insurance company and tell them.

Q. Whom would you call?

(Testimony of Kermit Rice.)

A. The Turner Agency.

Q. Would you call the Turner Agency, or report to the office of the Idaho Refining Company?

A. I would report or call the Turner Agency.

Q. Then what would happen, if you know?

A. Well, they in turn would, as I understand it, notify an Adjusting Bureau.

Q. Did you ever discuss the matter of the proposed cancellation of the policy with Mr. Gilbert Moyle? A. Yes, sir.

Q. Did you ever hear him discuss the matter with the employees—the truck drivers? [1219]

A. Yes, sir.

Q. What would he tell the drivers in your presence?

A. Well, he told them at one meeting that if it were cancelled we would have an awful hard time replacing that insurance.

Q. Did you ever have meetings with the drivers for discussion of these accidents and wrecks?

A. Yes, sir.

Q. Which drivers would be called in?

A. All the drivers that would be in town.

Q. How many times did this occur—how many meetings did you have?

A. Oh, there were several meetings. I don't remember exactly how many there was.

Q. Would the character and nature of the accidents be discussed at the time?

A. To some extent.

(Testimony of Kermit Rice.)

Q. Do you recall, or can you give us any reasonably definite statements of the accidents and their nature during the latter part of 1941, and particularly where trucks were covered by Policy 227?

Trial Examiner Riemer: Read the question, please.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. There was one accident at Weiser.

Q. And who was the driver? [1220]

A. Wayne Douglas.

Q. Yes. A. They testified——

Q. No, don't say anything about that. What other accident did you know of?

A. You say in the fall of 1941?

Q. Yes. Do you know of the accident of Patterson? A. Yes.

Q. Was that reported to you? A. Yes.

Q. Was the accident of Ellingford reported to you? A. Yes, sir.

Q. The accident of Douglas was the one at Weiser, was it not? A. Yes, sir.

Q. Did you ever hear of any accidents earlier than that, the accident of Henricksen?

A. Yes.

Q. Where was that? A. Nampa, Idaho.

Q. Did you ever hear of the accident of Whitesides? A. Yes.

Q. Where was that?

(Testimony of Kermit Rice.)

A. South of Ogden, Utah.

Q. Did you ever hear of the accident of Merrill,—Stanley Merrill? [1221]

A. Which accident?

Q. Did he have more than one?

A. Yes, sir.

Q. How many did he have?

A. Three.

Q. Well, did you hear of each of them?

A. Yes, sir.

Q. Did you ever hear of the accident of John Evans? A. Yes.

Q. At the Kraft Cheese crossing?

A. Yes.

Q. How many accidents did he have?

A. Two.

Q. What time of the year were those accidents?

A. One was in the fall, and the other one was in the summertime.

Q. Of what year?

A. I believe that one was in the fall of 1940 and the other one in the summertime of 1941.

Q. Where did those occur?

A. At the Kraft Cheese crossing.

Q. What was the character of the equipment that these drivers were driving as to its upkeep, repairs, the maintaining of the trucks, the condition of the trucks, and so forth?

A. Well, every time when something happened, we have a regular form he writes it down on. [1222]

Q. That is what I want. What have you to say

(Testimony of Kermit Rice.)

with reference to the character of the trucks and the trailers from a mechanical standpoint that the drivers would take out on the road, would they be in defective condition, or in good condition?

A. They would be in good condition.

Q. What was done with reference to examining them and determining their condition?

A. It was examined every time they came in.

Q. Yes. By whom was it examined?

A. By myself, mechanics, and the grease men.

Q. Now, if anything was found wrong, or any apparent defects, what would be done?

A. It was repaired.

Q. When would it be repaired with reference to the next trip?

A. Before the next trip.

Q. When a truck had been out on a run, would it always be brought back to the shop?

A. Yes, sir.

Q. Before any loading was done?

A. Yes, sir.

Q. What would be done to the truck when it was brought back?

A. It was greased, and all tires checked, the fire extinguisher checked, lights, electric flares, oil check and water check.

Q. What examination was to be made, if any, for mechanical defects? [1223]

A. It was all looked over while it was being greased.

(Testimony of Kermit Rice.)

Q. Was that the case with every truck that went out on the road? A. Yes, sir.

Q. What have you to say then with reference to the general condition of trucks and trailers that were used for transporting products?

A. Good condition.

Q. Now, when did you first learn of the purported cancellation of the insurance by the insurance company?

A. It was on the evening before I let the drivers go.

Q. When were the drivers discharged?

A. It was on November 14, 1941.

Q. At what time?

A. Well, they were notified all the way from about 8:30 in the morning until along about in the afternoon, and at noon.

Q. Had you been advised with reference to their discharge on the 13th?

A. In the evening, I was told to get a new crew.

Q. Who gave you that information?

A. Mr. Moyle.

Trial Examiner Riemer: Just a minute. I want to get this straight. Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Q. (Mr. Merrill): What did Mr. Moyle tell you, and when did [1224] he tell it to you?

A. It was on the evening of November 13, he

(Testimony of Kermit Rice.)

told me the insurance policy had been cancelled, and to get me a new crew of drivers.

Q. Had you been advised before that of any difficulty with the insurance?

A. I had been advised that there was a possibility that it would be cancelled, yes.

Q. What Mr. Moyle was it that gave you that advice? A. Gilbert Moyle.

Q. Following this advice, what did you do that evening?

A. I started looking for some drivers.

Q. Did you do anything on the evening of the 13th of November, 1941, with reference to instructing any of the drivers to deadhead back from any point, and particularly Ogden?

A. I believe—we had a terminal at that time at Ogden, and I instructed Mr. Henninger to deadhead the truckdrivers back in who were there.

Q. Who was Mr. Henninger?

A. The truck dispatcher.

Q. And so you did not say anything then to the drivers about deadheading back?

A. No, sir.

Q. Is that the fact? A. Yes, sir. [1225]

Q. Now, did you do anything else on the evening of November 13, 1941, with respect to the discharge of drivers other than you have testified?

A. No, sir.

Q. What did you do on the morning of the 14th?

(Testimony of Kermit Rice.)

A. I called all the truckdrivers and told them to come out to the plant, that I wanted to talk to them.

Q. What time did they come out?

A. As I recall the first man came around about 8:30.

Q. When did the last man come out, if you remember?

A. I believe that it was—there was some of the boys came just about the time that I gave them their checks—they arrived out there.

Q. (Trial Examiner Riemer): What time was that?

A. That was right around 11:15 or 11:30.

Q. (Mr. Merrill, continuing): What did you tell the drivers as they came out?

A. I told them that the insurance had been cancelled and I was sorry, but I would have to lay them off.

Q. What comment, if any, did any of them make?

A. Well, I believe there was only one man that made any comment.

Q. And who was he?

A. A man by the name of Howard Davis.

Q. What did he say?

A. He just told me, "You can't can me; I belong to the union." [1226]

Q. What did you say?

A. Well, I was rather astonished. I didn't know that there was anybody belonged to the Union.

(Testimony of Kermit Rice.)

Q. Did you say anything to him?

A. I told him that it was just too bad—"Here is your check."

Q. What else was said, if anything?

A. That was all I said to him.

Q. Did you have a conversation that morning or the morning before the 14th of November with Mr. Ayres while Ayers was sitting in a truck, ready to go to Jerome? A. I don't think so.

Q. On the morning of November 13, 1941, at about 9:30, state whether or not you had a conversation with Mr. James Ayers, who was sitting in a truck, ready to go to Jerome, in which you said, in substance or effect, that you had heard that some of the boys had joined the union?

A. I did not.

Q. And in which Mr. Ayers said "yes", and did you say, "What do they want?" And Mr. Ayers is purported to have said, "\$185.00 per month, with \$100 for extra board drivers"?

A. No, sir.

Q. Did you have such a conversation?

A. No, sir.

Q. Did anything that I have suggested in that question take [1227] place between you and Mr. Ayers in any conversation? A. No, sir.

Q. Do you know a man by the name of Heckert?

A. Yes, sir.

Q. How long had you known him prior to the 14th of November, 1941?

(Testimony of Kermit Rice.)

A. I believe that he was,—he went to work in the fall of 1940.

Q. As a matter of fact, it was in February of 1940, was it not, and he worked until November 14, 1941?

A. It could be, yes.

Q. Did you give him his test run?

A. Yes, sir.

Q. Following the test run, what was done?

A. Well, he was just told that I thought that he would be satisfactory, and to fill out an application blank and leave it there, or mail it back to me, and if I needed him. I would call him.

Q. What did he do, if you know?

A. As far as I know, he went back to Hailey.

Q. Did he go over and see Arch Webb?

A. He could have.

Q. You were not present if he did?

A. No, sir.

Q. At the time that you made that test run with him, did you [1228] have any conversation with him touching any labor union?

A. No, sir.

Q. Did you ask him if he belonged to any labor union?

A. No, sir.

Q. Did you say anything to him or make any comment as to what Mr. Gilbert Moyle—what you thought Mr. Gilbert Moyle thought about unions?

A. Will you read that question?

Trial Examiner Riemer: Read the question.

(Last question read aloud by the reporter as hereinabove recorded.)

(Testimony of Kermit Rice.)

A. No, sir.

Q. (Mr. Merrill, continuing): Were there,— was there any conversation passed between you and Mr. Heckert at that time or any other time with respect to membership in any labor union?

A. No, sir.

Q. Or labor unions? In any respect?

A. No, sir.

Q. Do you know a man by the name of Moss— Trevor Moss?

A. Yes, sir.

Q. Did he ever work at the Refining Company plant?

A. Yes, sir.

Q. Did you ever discuss with him union matters?

A. No, sir. [1229]

Q. Did you ever say to him in substance and effect with respect to drivers that had been discharged, quoting,

“Those sons of bitches are never going to drive out here again?”

A. No, sir.

Q. Did you have any conversation with Moss touching the discharged drivers?

A. Yes, I did.

Q. What was that conversation and when?

A. Well, I picked up the story around there that there was some of the older drivers, that is, drivers that had been discharged, that were going to beat him up over in a restaurant, so I asked him about it.

Q. What did he say?

(Testimony of Kermit Rice.)

A. He said, yes, that was a fact; he didn't know who they were, but they got tough and called him a scabdriver, and I told him that the thing to do was to stay away from those fellows, because I didn't want him to get beat up.

Q. Was anything else said about it?

A. No, sir.

Q. When did this conversation occur?

A. I believe that it was sometime in December.

Q. Of what year? A. 1941.

Q. When did Moss commence working for the company following [1230] the discharge of the drivers in November, 1941?

A. He was one of the first drivers I hired. It was right around the 17th of November, sometime.

Q. Well, now, was the matter of joining a union or membership in a union ever discussed in your presence by Mr. Moss and anyone else, Gilbert Moyle or anyone else? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Do you know a man by the name of R. E. Miller? A. Yes, sir.

Q. Did you ever discuss labor unions with him?

A. No, sir.

Q. Did you have a conversation with him at any time wherein any suggestion was made touching the reason for the discharge of these drivers, and in which you said in substance or effect, "If the drivers had gone to the office, instead of uptown, they would still be working for the company"?

A. No, sir.

(Testimony of Kermit Rice.)

Q. Did you ever make such comments to Miller?

A. No, sir.

Q. Or to anyone else? A. No, sir. [1231]

Mr. Merrill: We don't know that the employees you have in mind are any of those that you have produced here or not. They are not identified or tied up with these allegations.

Mr. Penfield: Obviously the Board could not make any finding unless we did put in some proof.

Trial Examiner Riemer: Is that the testimony of Heckert?

Mr. Merrill: I was not able to identify him.

Trial Examiner Riemer: I am asking you, Mr. Penfield, is that Heckert's testimony?

Mr. Penfield: Yes, it is.

Trial Examiner Riemer: I understand that allegation 5, sub-division 1 of the consolidated complaint, you refer to the testimony of Arthur L. Heckert.

Mr. Merrill: Well, if it be admitted by counsel for the Board that the only evidence that they rely upon in support of that [1232] allegation, and allegation 5-4 and 5-7, are the names of witnesses which they called, that is the testimony that I have directed to this witness' attention, then we will pass it.

Trial Examiner Riemer: I think that it would be easier and quicker if you would go ahead and ask your question. Go ahead.

Mr. Merrill: Will you read the question?

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

(Testimony of Kermit Rice.)

A. No, sir.

Q. Did you on November 13, 1941, inquire of a truckdriver employed by the Idaho Refining Company whether or not he belonged to Teamsters Local 440? A. No.

Q. And whether other truckdrivers employed by the company belonged to that union?

A. No, sir.

Q. Did you on or about November or December, 1941, instruct any truckdrivers employed by the Idaho Refining Company to present any grievance directly through the management and not through the Teamsters Local 440?

A. No, sir.

Q. Or any other outside organization?

A. No, sir.

Q. And did you at that time or any time indicate that the employees of the Idaho Refining Company, or the truckdrivers [1233] employed by the company prior to November 14, 1941, had been discharged because they sought to be represented by the Teamsters Local 440? A. No, sir.

Q. How many truckdrivers—have you, since November 14, 1941, inquired of persons applying for employment as truckdrivers for the Idaho Refining Company and employees hired as truckdrivers, whether or not they belonged to any Teamsters Union or outside organization? A. No, sir.

Q. Did you ever advise certain employees or prospective employees that the company was op-

tioned to be

closed to the public.

(Testimony of Kermit Rice.)

posed to membership of employees in any such unions? A. No, sir.

Q. How many of the truckdrivers were in the employ of the Idaho Refining Company at the Pocatello plant in November, 1941?

A. There was either 18 or 19.

Q. Were they all on the same basis with respect to rights or time, or were some of them on what has been called the extra board? A. Yes, sir.

Q. What is the fact?

A. Well, there was some on the extra board.

Q. What is meant by that? [1234]

A. Well, when I hired a driver it was understood with him that he went to work with the understanding that he was to stay on the extra board until a time when I knew definitely that I could employ him steady, and then he would be considered as a steady driver.

Q. State whether or not the apparent need for truck drivers as the winter approached diminished from what you had been carrying in the summer?

A. Yes.

Q. Were any of these drivers told that they would not be needed during the winter months?

A. Yes, sir.

Q. Whom did you tell that to?

A. On October 15, I told——

Q. What year? A. 1941.

I told Howard Davis, Guy Campbell, Lee Stanford and John Ray that they had better try to

(Testimony of Kermit Rice.)

find another job, because as far as I knew, there would not be enough work that winter for them.

[1235]

Q. (Mr. Merrill, continuing) Were the four men whom we have mentioned, John Ray, Guy Campbell, Howard Davis and Lee Stanford at that time working on a salary basis, or on an hourly basis?

A. They were working on an hourly basis.

Q. How were the other truckdrivers working?

[1236]

A. The other drivers were paid by the month.

Q. (Mr. Merrill, continuing) When would a driver who was working on an hourly basis, become eligible for payment by the month?

A. Not until after he had worked for six months.

Q. Then the facts are, that these four had not worked long enough for that change?

A. Well, I say six months—as previously stated, if I didn't have enough work to keep them steadily employed, they could remain on the extraboard for a year.

Mr. Merrill: That is all.

Cross Examination

[1237]

Q. (Mr. Penfield, continuing) You testified that you had three mechanics in your shop, and one or two grease men, is that correct, in the fall of 1941?

A. Yes, sir. [1246]

Q. Isn't it true that it was necessary for those mechanics to put in a great deal of overtime in order to get this work done?

(Testimony of Kermit Rice.)

A. We worked long hours.

Q. So they had to put in very considerably more than 40 hours a week, did they not?

A. That was contemplated when they hired in.

Q. Well, that wasn't the question.

A. What was the question?

Mr. Penfield: Read the question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. Yes.

Q. (Mr. Penfield, continuing) Now, what occurred in November to make the work any less?

A. Business slowed down.

Q. Were you here when Mr. Brown was testifying this morning? A. Yes, sir.

Q. Would you say that he was incorrect when he said that the work continued steady?

A. Well, the work might have continued steady.

Q. As a matter of fact, you were just as busy as you always were at that time, were you not?

A. You mean in the shop?

Q. Yes. [1247] A. Yes.

Q. Was there any reason for things slowing down then or at that time that you can think of?

A. We had a lot of trucks sitting around the yard—business slowed down.

Q. You still had a lot of work in the shop, though?

A. Yes, there was quite a lot of work in the shop.

(Testimony of Kermit Rice.)

Q. As a matter of fact, when you discharged Mr. Archibald, you had to pitch in and do quite a bit of work yourself, didn't you?

A. Very little.

Q. (Mr. Penfield) And would you say that he was incorrect when he said that he had to work long hours? [1248]

The Witness: I don't believe Mr. Brown worked longer hours than he had been working.

Q. (Mr. Penfield, continuing) Do you know the average hours per week that Mr. Archibald worked during the time that he was employed?

A. Average hours per week?

Q. Per day?

A. It was something around 9 or 9-1/2 hours, I believe.

Q. Was that on a 7-day week?

A. Yes, I believe that it was figured 7 days a week.

Q. Were the other mechanics working about the same? A. Yes, sir. [1249]

Q. (Mr. Penfield, continuing) Now, on this particular Monday before the 14th, Archibald wasn't drunk, was he?

A. He wasn't able to work. I couldn't testify whether he was drunk or not. [1258]

Q. You don't claim that he was drunk, that he came to work drunk, do you?

A. He wasn't drunk at the time he was there.

Q. Was he sick?

(Testimony of Kermit Rice.)

A. Well, he was all doubled up, and said he had the bellyache.

Q. As far as you know, he did have the bellyache, didn't he?

A. Well, from the looks of his eyes, he really had the bellyache, all right.

Q. (Trial Examiner Riemer) Did Archibald work on Monday, November 10? I have been under the impression heretofore that he didn't show up for work on Monday, November 10?

A. He came to work.

Q. He did come to work? A. Yes, sir.

Q. (Mr. Penfield, continuing) Did you send him home? A. Yes, sir.

Q. Wouldn't you send your mechanics home who were sick?

A. Yes,—if they are sick—send them home.

[1259]

Q. When did you call these meetings of the drivers that you spoke of?

A. Well, we had those meetings just at random as we could get a bunch of the boys together.

Q. What was discussed at these meetings?

A. Well, the care of the equipment and being more careful with our commodities. [1263]

Redirect Examination

Q. (Mr. Merrill, continuing) Mr. Rice, you have been asked touching the fifth wheel on the truck that Evans had when he had an accident. I believe that you said it was locked. What [1273] explanation is there for that?

(Testimony of Kermit Rice.)

A. Well, when they lock those fifth wheel tables, it is easier to back a trailer out of the garage. Now, you take a unit 55 feet long, and that is pretty long and takes a pretty big space to back it out.

Q. What was the practice in the garage relative to locking the fifth wheel?

A. The grease monkeys generally lock them, back the trailer out, then unlock them.

Q. Would the driver have anything to do with unlocking the wheel?

A. No. He should inspect it.

Q. If he should find it locked, what should he do?

A. Unlock it.

Q. Would the drivers be capable of doing that sort of thing?

A. Yes, sir.

Q. What is the fact as to whether or not all the drivers know that is to be taken care of, if it is locked, to unlock it?

A. Yes, sir.

Q. And in this instance, Evans failed to unlock it?

A. Yes, sir.

Q. In a matter where he should have unlocked it?

A. Yes, sir.

Q. What have you to say in connection with whether or not that was one of the reasons causing the accident? [1274]

A. If it had been unlocked, he wouldn't have torn the tongue out of the trailer.

Q. Isn't it a fact that because he failed to unlock it, that was one of the reasons for tearing the tongue out of the trailer—is that what you mean?

A. Yes, sir.

(Testimony of Kermit Rice.)

Q. With respect to Archibald. He spoke to you that morning, I believe you said, of Monday of the work that he was discharged, and said that he had a bellyache. Did he tell you what kind of a bellyache he had? A. No, sir.

Q. Do you have any idea of the type or character of his bellyache?

A. Well, as I said, he looked like he had been drinking.

Trial Examiner Riemer: Was it a bellyache or a hangover?

There is a big difference.

A. Well, I don't know. He might have been top-heavy with a headache. He was all bent over.

Q. What was there about his eyes or face that caused you——

A. His eyes were all bloodshot.

Q. From that, you concluded what?

A. That he had been drinking. [1275]

Redirect Examination (Continued)

Q. (Mr. Merrill) Following November 1, 1941, within a reasonable time thereafter, how many did you hire for truckdriving?

A. I believe that it was 18.

Q. Were any others of the 18 not used, then?

A. Well, at the time of his accident I believe they were all [1284] being used. However, a little later on, some of the boys were laid off.

Q. Now, reducing the force to what number, the normal force of truckdrivers?

A. About 14. [1285]

(Testimony of Kermit Rice.)

Recross Examination

Q. (Mr. Penfield) What was the salary of the crew of drivers that were laid off.

A. Most of those drivers were receiving \$160 a month.

Q. When you say "most of them", you have reference to those that you called the "regular drivers"? [1287]

A. Yes, sir.

Q. Excluding those that you said were extra board drivers?

A. Yes.

Q. What salaries were paid the new drivers that were hired?

A. I believe that it was \$175 a month. [1288]

Redirect Examination

Q. (Mr. Merrill) Counsel asked you with respect to the pay of the truckdrivers, and you said they were receiving \$160 a month. What was the pay being given to those who were on the extra list?

A. They received 60 cents an hour.

Q. And time and a half for overtime?

A. No, sir; for 60 hours a week, they were under Interstate Commerce Commission regulations.

Q. With respect to the governors that you say were on these trucks: could they be tampered with by the drivers?

A. Very easily.

Q. (Trial Examiner Riemer) Were they?

A. I found a number—

Q. Tell us whether they were tampered with?

A. I found a number of them that had been tampered with. [1291]

(Testimony of Kermit Rice.)

Q. (Mr. Merrill, continuing) How would they be tampered with?

A. The setting had been changed.

Q. How could that be done?

A. Just flip a little plate over on the vacuum type governor, and adjust a screw; on the fly-ball type governor, all you had to do is set up a nut or a bolt.

Q. When you would find that they had been thus tampered with, what would it indicate, that the speed had been increased?

A. Yes, it had always been increased.

Q. Do you remember to what limit the speed had been increased on any of those that you observed had been tampered with?

A. Well, we checked some—when we checked them, they wouldn't even cut off at all, the vacuum type governors. [1292]

C. E. HENNINGER

was called as a witness by and on behalf of the Respondent, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: What is your name?

The Witness: C. E. Henninger.

Trial Examiner Riemer: Where do you live?

The Witness: 68 Willowood, Pocatello.

(Testimony of C. E. Henninger.)

Direct Examination

Q. (Mr. Merrill) For whom are you working, Mr. Henninger?

A. The Idaho Refining Company.

Q. How long have you been working for that company?

A. Since the 16th of June, 1938.

Q. Prior to that time, where did you work?

[1296]

A. Big Springs, Texas, for the Cosdon Petroleum.

Q. When you came to work for the Idaho Refining Company, in what capacity did you work?

A. A treater.

Q. Explain what you mean by a "treater"?

A. Well, a treater is a person or persons that with chemicals treat the gasoline in such a manner that it is suitable for the public.

Q. Now, in your capacity, did you have any supervisory authority over anybody else?

A. No.

Q. How long did you work for the Idaho Refining Company in that capacity?

A. Oh, around a year.

Q. Then what service did you perform?

A. I took charge of the loading dock.

Q. Do you remember the date that you took charge of the loading dock?

A. No, I don't. It is on record. I can't tell you what date it was.

Q. What position are you now holding,

A. I am—now, I am in charge of the loading dock, the treater, and, truck dispatcher.

(Testimony of C. E. Henninger.)

Q. When did you assume those duties?

A. I assumed the truck dispatching possibly six months to a year [1297] after I took charge of the loading dock.

Q. After you took charge of the loading dock?

A. Yes, sir.

Q. Could you give the year in which you assumed your present position, about the month and year?

A. Oh, I imagine that it was in the spring of 1940.

Q. And since that time you have had the same job that your are now holding? A. Yes.

Q. What are your duties under that position that you are now holding?

Q. You mean all my duties?

Q. Yes, just a general statement.

A. Well, I supervised the treating, to see that all gasolines and distillates are treated to go to storage corectly. I supervise and see that all the orders for gasoline to various customers are filled and delivered. After the trucks are all loaded, I see that the drivers are called to get the trucks out.

Q. Do you have any contacts with the mechanical department? A. Yes, sir; very much.

Q. What are those contacts?

A. Well, I am in need of trucks all the time, and I contact the garage and the foreman and the mechanics and keep after them so that I can have plenty of trucks to deliver my products. [1298]

(Testimony of C. E. Henninger.)

Q. Do the truckdrivers assist you on the loading dock, or in your department?

A. Once in a while, yes.

Q. Now, in your contacts with the mechanics, did you become acquainted with a man by the name of Archibald?

A. Yes, sir.

Q. Now, did you ever observe him under the influence of liquor while on the job?

A. Yes, sir.

Q. How did you make that observation?

A. Well, it was one morning—I can't recall the day,—but I was going over to the garage to see about a truck, and I met Mr. Archibald in the door, coming out, and I backed off and looked at him a minute, and I said, "Boy, you sure had a tough night."

Q. What did he say? [1299]

A. Well, he just kind of grinned, and went on out.

Q. Did you smell any liquor on his breath?

A. I did.

Q. What else did you observe that made you think that he was under the influence of liquor?

A. Well, his eyes were all bloodshot, and his face was very red. He wasn't any too steady on his feet.

Q. Where did he go, if you know, then?

A. Well, I didn't know at that time. Mr. Rice came over and asked me if I had seen him, that he had disappeared, and I said, "Well, I saw him just a few minutes ago", and later we noticed him in a car outside of the gate.

(Testimony of C. E. Henninger.)

Q. Do you remember how long he remained in that car?

A. No, I didn't pay any more attention to him.

Q. Had you made any other observations as to the character of his work, or his attitude towards his work?

A. Well, I knew he was—and had cautioned him two or three times—he was very slow.

Q. Did you ever make any complaints, or suggestions to Mr. Rice touching the continuance of Archibald in employment?

A. I think that I did once, yes.

Q. When was that?

A. When I was in a hurry for a truck, it didn't seem like there was anyone trying to hurry on it, and then I asked Mr. Rice when he was going to get somebody that could hurry up a little [1300] bit.

Q. Did you make any comment on Archibald?

A. I was speaking of Archibald at that time.

Q. What did Rice say, if anything?

A. He said, well, he would just have to do something.

Q. How long was that before Archibald was discharged?

A. Oh, I would say possibly in the neighborhood of a couple or three weeks before this time.

Q. I *ma* directing your attention to a meeting of the employees of the Idaho Refining Company at which Mr. Henry D. Moyle spoke; do you recall the incident?

A. Yes, sir.

Q. About when did that occur?

(Testimony of C. E. Henninger.)

A. You mean the time of day or the time of year?

Q. Both.

A. Well, if I remember right, it was in the spring of the year at noon.

Q. Was it not in 1939, or was it some other year, if you remember?

A. Well, let's see; I believe that was in 1940.

Q. What was your particular work at that time?

A. I was on the loading dock at that time.

Q. How was this meeting called, if you know?

A. Mr. Kinnich, the superintendent came out to the loading dock and said, "Get all the men at the plant or anyone you [1301] can reach by telephone to be at the office door shortly after twelve o'clock."

Q. Did you do so? A. Yes.

Q. Did you attend? A. Yes, sir.

Q. Was there any other meeting, aside from that, or was that the only such meeting that occurred at which Mr. Henry D. Moyle spoke?

A. Yes, it was.

Q. The only meeting? A. Yes, sir.

Q. Now, then, what did Mr. Moyle talk about, Mr. Henry D. Moyle?

A. Mr. Moyle talked at that time about the FHA loans, and we were very interested in building some homes—we wanted to know what the company would do in order to help all of the employees on this matter.

Q. Did he talk about anything else?

A. No, I don't think so.

(Testimony of C. E. Henninger.)

Q. Was there any mention at that time made by him of the Association?

A. The Association wasn't mentioned.

Q. You know what I mean by the "Association"? A. Yes, sir. [1302]

Q. Was there any statement made of any kind or character touching any of the members of the Association? A. No, sir.

Q. And for whom was that meeting, then?

A. It was for all the employees of the Idaho Refining Company.

Q. And had no reference to any association members? A. No, sir. [1303]

* * * * *

Q. Did you have anything other to do with their discharge? A. No, sir.

Q. Did you know at that time of any union activity of any of the truckdrivers? A. No, sir.

Q. Did you know whether or not any of them belonged to the Union? A. No, sir.

Q. Or would that have made any difference with you in your department? A. No, sir.

Q. In any sense of the word? A. No, sir.

Q. You knew, of course, these truckdrivers personally? A. Yes, sir. [1304]

Q. Did you ever offer any of them employment?

A. Yes, sir.

Q. State whom, and when.

A. On the 14th of December, I contacted——

Q. What year? A. 1941.

Q. Yes. A. I contacted Mr. Whitesides.

Q. Myron D. Whitesides?

(Testimony of C. E. Henninger.)

A. Yes, and told him that I had a job on the loading dock and asked him if he was interested.

Q. Did you tell him how much the job paid?

A. Yes, sir.

Q. What did you tell him?

A. I told him 60 cents an hour, 40 hours a week, with time and a half for all over 40 hours.

Q. What did Mr. Whitesides say?

A. He said that he was very much interested, and he would let me know the next morning, that he would like to give Covey notice.

Q. Who was Covey?

A. Covey Gas & Oil Company, Pocatello.

Q. Was he working for that company at that time? A. Yes, sir.

Q. And this was on the 14th day of December, 1941? [1305] A. Yes, sir.

Q. And what next occurred, if you know?

A. The next morning he called me and said, "I am very sorry, but I can't go to work at the refinery".

Q. Did he say why?

A. He said that the union advised him not to, didn't want him to.

Q. Did he say anything else? A. No.

Q. But you knew at that time that he was working for the Covey Gas & Oil Company of Idaho?

A. Yes, sir.

Q. Was Mr. Whitesides later re-employed by the Refining Company? A. Yes, sir.

Q. When? A. February 11, 1942.

(Testimony of C. E. Henninger.)

Q. How long did he work for the Idaho Refining Company?

A. Trial Examiner Riemer: In what capacity?

The Witness: He was in charge of the refinery warehouse.

Q. (Mr. Merrill, continuing): At what wage, if you know? A. I don't know.

Q. How long did he continue working for the company?

A. Until June, 1942,—June 19, 1942.

Q. Do you know the reason that he left, then?

A. Yes. [1306]

Q. What was it?

A. He secured a better position with the Arms Plant in Utah.

Q. Was his leaving voluntary?

A. Yes, sir.

Q. Do you know when he went to work for the Covey Gas & Oil Company of Idaho?

A. Yes, sir.

Q. When? A. December 1, 1941.

Q. How long did he work for that company?

A. Until February 11, 1942.

Q. That was the time that he came over to the Refining Company? A. Yes, sir.

Trial Examiner Riemer: Will you tell me those dates again, Mr. Witness?

The Witness: He started work for the Covey Gas & Oil Company December 1, 1941 and worked for Covey Gas & Oil until February 11, 1942.

Trial Examiner Riemer: Thank you.

(Testimony of C. E. Henninger.)

Q. (Mr. Merrill, continuing): Then commenced with the refining company and continued until June 19, 1942? A. Yes, sir.

Q. Who else did you offer employment to, if anyone?

A. I contacted Johnny Evans, and I told him the same as I told Whitesides. [1307]

Q. Did you tell Mr. Evans the amount of pay?

A. Yes, sir.

Q. 60 cents an hour, and time and a half for all over 40 hours a week? A. Yes, sir.

Q. Did you tell him the work that he was to do?

A. Yes, sir.

Q. What did you tell him?

A. I told him that it was the loader-helper job on the dock.

Q. Did Mr. Evans make any comment with respect to pay? A. No, sir.

Q. What did Mr. Evans say, if anything?

A. He said that he could not go to work.

Q. Did he give you any reason?

A. Well, he stated that the union didn't want them to go to work at the Refinery because he thought that it would hurt their case against the refinery.

Q. Did he go to work? A. No, sir.

Q. Did you offer employment to anyone else?

A. Yes, sir.

Q. Who? A. Mr. Cornia.

Q. When did you offer Mr. Evans this employment?

(Testimony of C. E. Henninger.)

A. December 14th—I mean the 15th. [1308]

Q. 1941. Did you offer employment to Boyd Cornia?

A. Yes, sir.

Q. On what date?

A. The same date.

Q. What did you tell Boyd Cornia?

A. He said that he was in the same position as Mr. Evans.

Q. I say, what did you tell him?

A. I told him that I had a job on the dock at 60 cents an hour, 40 hours a week, and time and a half for overtime. He said that he was in the same position as Mr. Evans.

Q. Was he there when Mr. Evans was there?

A. Yes, I talked to Johnny and Boyd about the same time.

Q. Well, what I wanted to know, state what Mr. Cornia said to you when you made him the offer?

A. Well, I said, "Boyd, do you want the job——"

Q. Was he there with Evans at the time?

A. Yes, sir. And he said, "No," he was in the same position as Mr. Evans.

Q. Did he then at any later time accept employment?

A. No, sir.

Q. Who else, if any, did you offer employment?

A. Mr. Miller.

Q. When?

A. December 15, 1941.

Q. Is that R. E. Miller? [1309]

A. Yes.

Q. What employment did you offer him?

A. The same as Mr. Evans and Mr. Whitesides and Mr. Cornia.

(Testimony of C. E. Henninger.)

Q. What, if anything, did he say?

A. Mr. Miller came over and said that he would stay around that afternoon and look things over and let me know about it in the morning.

Q. What did you tell him about pay?

A. 60 cents an hour for 40 hours, time and a half for overtime.

Q. Did he make any complaint about the pay or the job? A. No, sir.

Q. Did he let you know the next morning?

A. Yes, he came back over the next morning.

Q. What did he say?

A. He said, "I am unable to go to work."

Q. Did he give you any reason? A. Yes.

Q. What did he say?

A. He said, "The Union advised us not to go to work at the Refinery", he said, "although I would like to".

Q. Did he make any further explanation or suggestion? A. No, sir.

Q. Did he later enter the employ of the Refining Company? A. Yes, sir.

Q. When? [1310]

A. He started to work at the Idaho Refining Company on March 11, 1942, as a truckdriver.

Q. Is he still working? A. Yes, sir.

Q. In that capacity? A. Yes, sir.

Q. Now, did you offer employment to any other discharged truckdrivers?

A. Yes, Mr. Kenney Brower.

Q. Is that K. C. Brower? A. Yes, sir.

Q. When did you offer him employment?

(Testimony of C. E. Henninger.)

A. On the 18th of December.

Q. Was that 1941? A. Yes, sir; 1941.

Q. Where did you offer him the employment?

A. On the loading dock.

Q. What did you say to him?

A. I told him that I had a job on the loading dock that paid 60 cents an hour for 40 hours, with time and a half for all overtime.

Q. Did you tell him that he could have that job?

A. Yes, sir.

Q. What did he say?

A. He said if I would give him two days to get rid of a load of [1311] grapefruit and nuts, he had on his truck, he would go to work.

Q. What did he mean by that, if you know?

A. Well, he was hauling some produce from Nevada, or some place, I don't know exactly, kind of on his own hook.

Q. That is, he was hauling fruit and nuts from the South up here for marketing purposes?

A. Yes, sir.

Q. Trucking them up? A. Yes, sir.

Q. What did he do?

A. On December 20 he started to work.

Q. With the Refining Company?

A. Yes, sir.

Q. In what capacity?

A. As a loader-helper.

Q. How long did he continue working?

A. He worked until February 20, 1942.

Q. Two months? A. Yes.

(Testimony of C. E. Henninger.)

Q. What did he do then?

A. He *quite* February 20, went to work for the Arms Plant in Ogden.

Q. Was his discontinuance of employment voluntary? A. Yes, sir.

Q. I mean from the Idaho Refining Company?
[1312]

A. Yes, sir.

Q. Did he tell you what he was doing?

A. Yes, sir.

Q. Why he was leaving? A. Yes, sir.

Q. Did you offer employment to anyone else?

A. Yes, I offered employment when Mr. Brower left, to Mr. S. R. Burkholder.

Q. Where did you offer him employment?

A. As a loader-helper at the Idaho Refining Company.

Q. What conversation did you have with Mr. Burkholder touching that?

A. I told him that the pay was, 60 cents an hour, and time and a half for all over 40 hours a week.

Q. What did he say?

A. He said that he was—he thought he was going to work for Garrett, and if he didn't go to work for Garrett, he would let me know, in the next couple of days, and go to work.

Q. Did you,—did he say anything to you later?

A. Yes, he called me in about two days and told me that he secured a job with Garrett.

Q. Did he then go into the employ of Garrett Transfer Company, if you know? A. Yes.

(Testimony of C. E. Henninger.)

Q. Did he subsequently work for the Refining Company? [1313] A. Yes, sir.

Q. I mean, did he later work for the refining company? A. No, sir.

Q. Did you offer employment to any of the others of these discharged truckdrivers?

A. No, sir.

Q. Those six were all? A. Yes, sir.

Q. Did you have any conversation with Mr. Evans during the month of December, 1941? The date not having been fixed definitely by Mr. Evans—with respect to the discharge of these drivers?

A. Yes, I did.

Q. What was that conversation?

A. Well, Johnny came over to the refinery two or three times and we talked about different things—not exactly about the truckdrivers, but on this particular time, I think that I made a remark to him that it was too bad that the insurance was cancelled and that the boys were all thrown out of work.

Q. At the time you made that comment, I will ask you whether or not Mr. Evans said in substance or effect that you knew better, that they were fired because they belonged to the union to which you said,—hung your head and said, “Maybe you are right”?

A. I might have made that remark, but I never hung my head [1314] and said, “You might be right.” I thought Johnny knew me better than that.

(Testimony of C. E. Henninger.)

Q. Did you make any comment that Evans might be right? A. No, sir.

Q. Some comment was made that you found that out during the hunting season around Jerome. What is the fact?

A. I was never hunting at Jerome, and I have only been at Jerome one in my life since I have been in Idaho.

Q. Do you go hunting? A. Yes, sir.

Q. Where do you go?

A. Aberdeen and Blackfoot.

Q. Did you know at the time of the discharge of these employees that they belonged to Local 440?

A. No, sir.

Q. Did you learn of that later?

A. I did after the 14th.

Q. And from whom?

A. The truckdrivers themselves.

Q. State whether or not you told Mr. Evans in substance or effect that Merrill and Whitesides had been up and down service stations saying that the union was going to make it tough for the refinery company? A. I did not.

Q. Did such occur? [1315]

A. I don't know.

Q. Did you have any information of anything of that sort? A. No, sir.

Q. Will you explain how Mr. Miller came to be hired as a truckdriver, which I believe you said was March 11, 1942?

(Testimony of C. E. Henninger.)

A. March 11, yes, sir. Well, I had a very important shipment of gasoline to make to Salt Lake and there wasn't any drivers available and Mr. Rice and Mr. Gilbert Moyle were out of town and I had to get this gasoline delivered, so after trying to locate both men for a number of hours, I drove over to R. E. Miller's home about eight o'clock that night, and Mr. Miller was home, and I walked in and I said, "Would you like to go to work?" And he said, "Sure", and I said, "Well, get ready"; and he said, "Doing what?" And I said, "Driving a truck", and he said, "Sure enough?" and I said, "Yes, you can go to work, can't you?" and he said, "Sure, I got a withdrawal card when I went to work at Kraft's", and I said, "Well, get your shoes on and let's go."

Q. Was that all of that conversation?

A. Yes, sir.

Q. Was there any other comment made touching any union activity of any kind or character?

A. Oh, I don't know what—remember now what Red said, but I told him at the time that I didn't care whether he belonged to the union or not,—I wanted a man.

Q. Did you care whether or not he belonged to the Union? [1316]

A. No, I didn't, it didn't make any difference to me.

Q. It didn't make any difference in his employment whatever?

A. No, sir.

(Testimony of C. E. Henninger.)

Q. Did it with any of the men who had worked under you? A. No, sir.

Q. Had it ever made any difference?

A. No, sir.

Q. Mr. Henninger, have you since the 14th day of November, 1941, inquired of any persons applying for employment as truck drivers, whether or not they belonged or had belonged to the Teamsters Unions or any outside labor organization, or did you make any such inquiry of any employees hired as truckdrivers? A. No, sir.

Q. Have you ever advised them, or any of them, that the company was opposed to membership of the employees in such unions? A. No, sir.

Q. Did you in November and December of 1941 instruct the truckdrivers employed by the Idaho Refining Company to present any grievance that they had direct to the management, and not through Teamsters Local 440 or any other outside organization? A. No, sir.

Q. Did you indicate to any such employees at any time that the truckdrivers employed by the company prior to November 14 had been discharged because they sought to be represented by Teamsters Local 440? [1317] A. No, sir.

Q. State whether or not you at any time have ever attempted to dominate or interfere with the administration of the labor association that was organized at the Idaho Refining Company?

A. What was that question, again?

(Testimony of C. E. Henninger.)

Mr. Penfield: It seems to me that that calls for a conclusion.

Trial Examiner Riemer: I think that it does, too.

Mr. Merrill: All right, then I won't ask it if it is not proper.

Trial Examiner Riemer: I think that it calls for a conclusion, but I am going to overrule the objection.

Q. (Mr. Merrill) Will you state whether or not the Idaho Refining Company through yourself or any other officer or supervisory employee, if you know, have ever attempted to interfere with the operations of, or to dominate in any way the conduct or actions of the Idaho Refining Company Benefit & Labor Association? A. No, sir.

Mr. Penfield: The same objection, on the grounds that it is a conclusion.

Trial Examiner Riemer: Overruled.

Q. (Mr. Merrill, continuing): Did you know of any such interference or domination?

A. No, sir.

Q. Did you know whether or not any such existed? [1318] A. No, sir.

Q. As a supervisory employee, were you ever told to make any distinction between union or non-union men? A. No, sir.

Mr. Merrill: You may cross examine.

(Testimony of C. E. Henninger.)

Cross Examination

By Mr. Penfield:

Q. With respect to your instructions on November 13, 1941, isn't it true, Mr. Henninger, that you did send trucks out on November 13 and early on the morning of November 14?

A. I believe that I made that statement, yes, sir.

Q. You sent them out on various runs?

A. Yes, sir.

Q. Some of those runs were not completed until the evening of the 14th, is that correct?

A. That's right.

Q. You never offered any of these persons whom you referred to jobs as truckdrivers, did you, with exception of Mr. Miller?

A. No, sir.

Q. You knew, did you not, that these employees had been driving trucks for a good many years?

A. Some of them.

Q. You knew that they were experienced truckdrivers?

A. I knew that some of them got their experience from the Refinery—not all of them. [1319]

Q. Was there any one of that group that was not an experienced truckdriver?

A. Mr. Leonard Fowler came to us to work at truck driving from filling stations at Covey.

Q. You never offered him a job, did you?

A. No, sir.

Q. I am referring to those that you offered jobs to.

(Testimony of C. E. Henninger.)

A. That isn't what you said.

Q. Well, I say it now. I am referring to those that you offered jobs to. A. No, sir.

Q. What do you mean "no"—do you mean that they were all experienced?

A. Yes, you said "wasn't experienced".

Q. Well, truckdriving calls for a degree of skill that is not required on the loading dock, isn't that correct?

A. Well, that answer might be mutual—it takes a little more under the hat to work on the loading dock than to be a truck driver.

Q. What do you mean "under the hat"?

Trial Examiner Riemer: He means brains.

The Witness: That's right.

Q. (Mr. Penfield, continuing): What does the work loading on the dock have to do that requires——

A. Well, the exact amount of gasoline delivered over the dock [1320] has to be correctly turned in to the office so that the correct yields, expense and cost and profit of the company is figured directly from the amount of gallons that go over that loading dock.

Q. As a matter of fact, truckdrivers have to do a certain amount—the truckdrivers collect money and make out reports of gasoline delivered, and that sort of thing, do they not? A. Yes.

Q. That takes a certain amount of brains, too, doesn't it?

(Testimony of C. E. Henninger.)

A. Yes, some of them had a very difficult time in doing it, too.

Q. But it takes a certain degree of skill in driving one of those transport trucks?

A. Mechanical skill, yes.

Q. The fact is, is it not, that these truckdrivers explained to you that they had been working at driving trucks for some years and that is the sort of jobs they wanted?

A. Some of them had, yes.

Q. Well, now, that isn't answering the question.

Trial Examiner Riemer: I don't think that the witness understands the question because of the way they are phrased or stated. They are negative. Put a positive or affirmative question to the witness.

Q. (Mr. Penfield, continuing): The drivers told you that they had been driving as truckdrivers for a good many years, and the jobs that they wanted were jobs as truckdrivers, did they not? [1321]

A. No.

Q. None of them told you that?

A. Not any of them that I contacted to go to work on the dock.

Q. How much overtime do the men on the loading dock work?

A. Well, I think that the records would show that. I couldn't exactly tell you.

Trial Examiner Riemer: Well, you are foreman on the loading dock.

Mr. Moyle: Might he finish his answer?

(Testimony of C. E. Henninger.)

A. (Witness continuing): The exact number of hours of overtime, I couldn't exactly say, but they get from 8 to 20 hours a week overtime in busy periods.

Q. (Mr. Penfield, continuing): From 8 to 20?

A. Yes, sir.

Q. Mr. Henninger, you were president of the Association at one time, were you not?

A. Yes, sir.

Q. At what time was that?

A. Well, I couldn't exactly say; I think that it is of record.

Q. Well, what is your best guess?

A. I wouldn't guess.

Q. It was after you took this present job, was it not—the last part of your term?

A. I don't know whether it was or not.

Q. You signed a statement for Mr. Babcock, did you not? [1322]

A. Yes, sir.

Q. I show you this and ask you if that is a statement that you made?

A. Could I compare this with my copy?

Q. Yes.

Mr. Merrill: I don't see any reason why he couldn't.

Mr. Penfield: I have no objection at all.

Mr. Moyle: Is that a signed copy?

Mr. Penfield: Yes, I have no objection to him comparing it.

A. Do you want me to read this whole thing?

Q. (Mr. Penfield, continuing): I just want you

(Testimony of C. E. Henninger.)

to state if that is the statement that you signed, is that your signature?

A. That is my signature on this sheet,—I think that is it.

Q. I call your attention to this portion in which you say,

“I am a member of the Employees Association at the plant. I was a charter member. I was president of it at one time after I was transferred to my present job.”

Is that or is that not a correct statement?

A. I don't know whether it is or not. If I knew what period I was president, I could answer your question.

Q. Well, you were the president, you have taken an active part in the Association, ever since you were president, have you not?

A. I haven't taken any part in the Association—any active [1323] part since June 1, a year ago.

Q. Well, you have attended meetings since then, have you not, Mr. Henninger?

A. I don't think that I have.

Q. As a matter of fact, you attended the meeting at which officers were elected in January, did you not?

Mr. Moyle: January of what year?

Mr. Penfield: January of 1942.

A. I don't think that I did.

Q. (Mr. Penfield): I show you Board's Exhibit 17-B which is the minutes of the annual meeting February 13, 1942—I beg your pardon—I said

(Testimony of C. E. Henninger.)

January,—I ask you if it is not a fact that those minutes show that you were present at that meeting? A. Yes, I believe it does.

Q. Does that refresh your recollection, Mr. Henninger?

A. Well, it shows that I was there. I evidently was.

Q. That was the meeting at which officers were elected for this year, was it not?

A. Yes.

Q. The president of the Association has something to do with running the organization, does he not?

A. I beg your pardon?

Q. The president of the Association has something to do with the running of the Association?

Mr. Merrill: That is objected to upon the grounds the by-laws [1324] that have been introduced in evidence would be the best evidence as to the powers of the president and what his duties are.

Trial Examiner Riemer: Overruled. Read the question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. Why, yes.

Mr. Penfield: No further questions.

Trial Examiner Riemer: Mr. Merrill?

Redirect Examination

By Mr. Merrill:

Q. Mr. Henninger, what advantages if any are

(Testimony of C. E. Henninger.)

there with respect to compensation for one belonging to the Association?

A. Well, there is quite a lot of advantage, because if you are hurt outside of the Refinery, that is not covered by state compensation, the Association pays.

If you are sick and can't work, or off for a certain number of days, the Association pays.

Q. Those privileges and advantages are additional, are they not, to such as may have to do with labor bargaining and things of that sort?

A. Yes, sir.

Q. Did you ever take any part in any labor activities of the Association, or was your interest in the Association after you became a supervisory employee confined to the benefits? [1325]

A. That is right.

Q. What is the fact?

A. I was only interested in the benefits.

Q. When other matters were discussed, did you remain or did you leave the meetings?

A. I was asked to leave the meetings. I didn't—I wasn't in on the discussion on any bargaining between the company and the Association.

Q. When were you asked to leave the meeting under those circumstances?

A. When the contract was drew up and discussed and voted on June 1 a year ago.

Q. And did you leave? A. Yes, sir.

Q. Did you take any part in any bargaining or discussion of any bargaining on wages, or conditions of the employees? A. No, sir.

(Testimony of C. E. Henninger.)

Q. Or were you ever present when such was discussed at the Association? A. No, sir.

Q. And has that been the fact ever since you became a supervisory employee? A. Yes, sir.

Q. Now, I believe that some of the truckdrivers were stationed at Ogden on the 13th or 14th of November, 1941, were they not? [1326]

A. Yes, sir.

Q. How were they handled—I mean to say, how was information sent to them of their discharge?

A. Of their discharge? I don't know.

Q. Were they deadheaded back?

A. They were notified by telephone to deadhead back to the refinery, yes, sir.

Q. Then after they had headed back, the information touching the discharges was imparted to them, is that the fact? A. I suppose so.

Q. You say that you didn't handle that?

A. No, sir.

Mr. Merrill: I see. That is all.

Recross Examination

By Mr. Penfield:

Q. Mr. Henninger, with respect to this meeting of February, 1942, you suggested, did you not, to Mr. Carlson, that he run for the position of secretary and you would back him in that position?

A. I was on the nominating committee yes, sir.

Q. You were on the nominating committee?

A. Yes, sir.

Q. Did you actually nominate Mr. Carlson?

A. I don't know whether I did or not.

(Testimony of C. E. Henninger.)

Q. You voted at that election, did you not?

A. I might have voted on the officers, yes, sir.

[1327]

Mr. Penfield: I believe that is all.

Mr. Merrill: I believe that is all.

Q. (Trial Examiner Riemer): Mr. Henninger, I don't know whether this has been asked or not. You work for the Idaho Refining Company?

A. Yes, sir.

Q. Who pays your salary?

A. Western Gateway.

Q. Your salary is paid by Western Gateway?

A. Yes, sir.

Q. Whom do you work for?

A. Well, I am under the supervision of the Idaho Refining Company.

Q. Who is your supervisor?

A. Mr. Gilbert Moyle——

Q. Do you take orders from him?

A. Yes, sir.

Q. But your salary is paid by the Western Gateway? A. Yes, sir.

Q. Do you hire employees for the Idaho Refining Company?

A. They are on the Western Gateway payroll, too.

Q. Is the loading dock on the Western Gateway payroll?

A. The men are paid, but the loading dock belongs to the refinery.

(Testimony of C. E. Henninger.)

Q. You hired R. E. Miller as a truckdriver?

[1328]

A. Yes, sir.

Q. To work for whom?

A. The Idaho Refining Company.

Q. Have you ever discharged any employees of the Idaho Refining Company?

A. Yes, sir—that is, men who were on my payroll, understand.

Q. When you offered jobs to Evans, Whitesides, and the others, was that offer of a job to them as a new employee?

A. Well, may I explain why I offered the job to these drivers?

Q. No, I am not interested in that. I think that is pretty clear. You needed men on the loading dock, and you offered positions to these people and they refused for one reason or another. What I am interested in knowing is this, Mr. Henninger, when you offered jobs to these men, did you say that the job would carry with it any seniority rights?

A. Oh, no.

Q. Or other privileges?

A. No, absolutely not.

Q. They would come in as new employees?

A. Yes, sir.

Q. That is all I wanted to know.

A. Yes, sir.

Q. Brower did accept a job, didn't he?

A. Yes, sir.

Q. He went to work on the loading dock about December 20, 1941? [1329]

A. Yes, sir.

(Testimony of C. E. Henninger.)

Q. Who paid his salary?

A. Western Gateway.

Q. Western Gateway? A. Yes, sir.

Q. Isn't it correct that if Evans and Cornia and Miller and the others had accepted the jobs that you offered them, their salaries, too, would have been paid by Western Gateway? A. Yes, sir.

Q. You started to work on,—for the Idaho Refining Company in June, 1938? A. Yes, sir.

Q. And came up from Texas?

A. Yes, sir.

Q. As a treater? A. Yes, sir.

Q. And you worked on that job until about June, 1939?

A. I think that is correct. There is about a year, I think, I worked as a treater.

Q. Were you president of the Association the year that you worked as a treater?

A. I think possibly that it would probably lap over from then, from the time I was a treater until I was on the loading dock, I am not sure about that.

Q. Then you became foreman of the loading dock about June, [1330] 1939? A. Yes.

Q. So it is possible that you were president of the Association during the year that you were foreman of the loading dock?

A. Well, I can't answer that. That is one thing that I forgot to look up.

Q. Is there any question in your mind, Mr. Henninger, that during your term of office as presi-

(Testimony of C. E. Henninger.)

dent of the Association you were either foreman of the loading dock or foreman of the loading dock in charge of the treaters and truck dispatching?

A. No, when I first took that job over, the truck dispatching was done in the office. I later acquired that.

Q. That is a later acquired title?

A. Yes.

Q. Then strike the truck dispatcher part of it, and repeat the same question, is there any question in your mind that during your term of office as president of the Association you were either foreman of the loading dock, or foreman of the loading dock and in charge of the treaters?

A. I think that is correct. [1331]

GILBERT MOYLE

previously sworn, was called as a witness by and on behalf of respondent, and further testified as follows:

Trial Examiner Riemer: You are Mr. Gilbert Moyle and you have previously been sworn and identified?

The Witness: Yes.

Direct Examination

By Mr. Merrill:

Q. When did you commence working for the Idaho Refining Company?

(Testimony of Gilbert Moyle.)

A. March 1, 1938.

Q. And are you still working for that company? A. Yes, sir.

Q. March 1, 1938, I believe, was at the inception of the company, when it was first organized?

A. Yes, sir.

Q. What were your duties when you commenced work?

A. To organize the sales department and the distributing end of the refinery business in Idaho.

[1332]

Q. Having then to do wholly with the sale of the products of the company? A. Yes, sir.

Q. How long did you continue in that employment?

A. Until the fall of 1939.

Q. And in the fall of 1939, what change, if any, was made?

A. They made me general manager.

Q. Have you been general manager of the plant there since the fall of 1939? A. Yes. [1333]

Q. Now, did you ever have any dealings or contacts with the Association? A. Yes, sir.

Q. In what way, Mr. Moyle?

A. In reference to their wage scale and working conditions.

Q. Before we get to that, were there ever any meetings arranged with you by any of the committees of the Association? A. Yes, sir.

Q. What committees?

A. A committee appointed I suppose by their

(Testimony of Gilbert Moyle.)

board of directors or officers for the purpose of contracting with the refinery [1335] for their wages and employment.

Q. Did you ever have any meeting with any grievance committee? A. Yes, sir.

Q. State whether or not the grievance committee communicated with you in writing at times?

A. They did, yes.

Q. When these communications were made to you, what would be done?

A. Well, we would consider the case and then report back to the committee our decision.

Q. I hand to you what has been marked for identification as Respondent's Exhibit 8. What is that, if you know, Mr. Moyle?

A. That is a letter written by the grievance committee to me, findings of the Grievance Committee justified——

Q. You don't need to say what it is, but signed by whom?

A. Signed by the committee, Kay Mills, D. W. Sutton, and S. R. Burkholder.

Q. Do you know those three men?

A. Yes, sir.

Q. What were they doing at the time?

A. Kay Mills worked in the plant, Mr. Sutton worked in the office, and Mr. Burkholder was a truckdriver.

Q. Did you receive this communication from the committee? A. Yes, sir.

Q. Did you act upon it? [1336]

A. Yes, sir.

(Testimony of Gilbert Moyle.)

Q. What are squawk sheets?

A. They are sheets that drivers make out giving information to the shop foreman as to the condition of the trucks when they are brought in, whether they need any repairs or service.

Q. Is that the practice followed in your company now? A. Yes, sir.

Q. State whether or not that practice has anything to do with this particular letter?

A. It has.

Q. What?

A. At that time, the drivers were complaining to me that on reporting the difficulties of their trips, that at times it wasn't completely followed out, and we instituted a system of having the drivers put in writing what they wanted—what was necessary to do to the truck before it could go out again.

Q. Was that the result of this letter?

A. Yes, I think that it was. [1337]

Q. (Mr. Merrill, continuing) Mr. Moyle, do you know when that letter, Exhibit 8, was delivered to you?

A. The exact date would be rather difficult for me to state.

Q. It is not dated—give us the approximate time?

A. To the best of my recollection, I would say that that was delivered to me either in February of 1941 or the late fall of 1940.

Q. 1940 or 1941?

A. 1940 or the early part of 1941.

(Testimony of Gilbert Moyle.)

Q. State whether or not it was delivered to you in person? A. It was.

Q. By whom?

A. I think that there were two or three of the committee presented that letter to me together.

Q. You mean either two or three that signed it?

A. Yes, sir.

Q. Do you know their signatures?

A. I think—Mills' signature is more familiar to me than the others.

Q. State whether or not those three men were in the employ of the Idaho Refining Company at the time that this letter was delivered to you?

A. They were.

Mr. Merrill: We offer it. [1339]

Trial Examiner Riemer: The same objection.

Mr. Penfield: Well, I don't think that it is material, anyway.

Trial Examiner Riemer: Mr. Moyle, I am troubled about the date—was Babe Kelso a driver discharged?

The Witness: Yes, sir.

Trial Examiner Riemer: For an accident?

The Witness: Yes, he had a wreck.

Q. (Trial Examiner Riemer): Do you know when that wreck occurred?

A. I think that we could establish that date, yes, sir. It is difficult to state that offhand.

Q. Do you have any recollection of it now?

A. My recollection would be possibly a week before that letter was written. I know that it was

(Testimony of Gilbert Moyle.)

immediately brought to the attention of the Employees Association and the committee met with me.

Trial Examiner Riemer: It may be admitted and marked in evidence as Respondent's Exhibit 8.

(Whereupon the document hereinabove referred to was marked and received in evidence as Respondent's Exhibit No. 8.)

RESPONDENT'S EXHIBIT No. 8

To Mr. Gilbert Moyle, General Manager
Idaho Refining Company

We, the undersigned grievance committee, find the Company justified in the action they have taken in regard to Babe Kelso, driver. We do find, however, that there is a great deal of misunderstanding between drivers and shopmen, and we feel that by having a check-sheet, the drivers can put in writing the condition of their trucks when brought in. We also suggest a check card from the shop showing the truck has been serviced and repaired and is in condition to run.

We find that trucks are in need of horns, and fog lights. We feel that this is good for both Company and drivers, and that brakes, lights and horns are very good insurance policies.

We feel that a meeting of drivers and shopmen is necessary once a month so they can talk over matters that would be conducive to better cooperation.

KAY MILLS,
D. W. SUTTON,
S. R. PAT BURKHOLDER.

(Testimony of Gilbert Moyle.)

Q. (Mr. Merrill): Kelso had been discharged prior to the time that this letter had been written to you, of course? A. Yes, sir.

Q. And you recall the fact that he was discharged? A. Yes, sir. [1340]

Q. Now, you mentioned some contract covering wages that you had with the Association?

A. Yes, sir.

Q. Will you explain how the matter was presented to you—the first contract?

A. The contract of June 1, 1941?

Q. Was that the first written contract that you had touching wages? A. Yes, sir.

Q. Explain how it was presented to you, and how you acted upon it?

A. A committee from the Employees Association presented us through their superintendent with a proposed wage agreement. We considered this agreement and made recommendations as to the rate of pay back to the committee for the Association to consider.

Q. And then what was done?

A. They considered it and had their committee sign the agreement.

Q. What, if anything, did you have to do, or the company have to do with the preparation of that agreement? A. Absolutely nothing.

Q. Do you know who prepared the statement?

A. I do not.

Q. Who presented the agreement to you? [1341]

(Testimony of Gilbert Moyle.)

A. I think that the agreement was presented to me by Mr. Peters.

Q. I believe that you did not sign the first agreement? A. I think that that is correct.

Q. What did you do with the agreement after it had been presented to you, did you present it to the officers of the company?

A. It was made the topic of discussion, yes.

Q. And presented to the officials who did sign it?

A. Yes.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Merrill): Mr. Moyle, in what manner was the request for a change in wages presented to you by the committee of the Association?

A. It was a list of the employees and the wages that they were receiving and the wages that they wanted.

Q. Was that submitted with the agreement or before the agreement?

A. That was submitted before the agreement.

Q. Now, after you had received that list and those changes that the employees desired and which the employees requested, what did you do?

A. We took the matter up with our superintendent and other [1342] officers and gave them the wage scale that we proposed.

Q. Was the proposed wage scale that you submitted to them a change in the wages that they had theretofore been receiving?

(Testimony of Gilbert Moyle.)

A. It was an increase, yes, sir.

Q. How did the increase which you submitted compare with the increase which they requested?

A. We more than met the increase halfway.

Q. More than halfway? A. Yes, sir.

Q. Did you go the full limit with any of the requested increases, if you recall?

A. Yes, we did.

Q. In what respect?

A. I think that our welder—I am not right positive, it is kind of hard to recall those exact prices, but I am certain that there was one or two on this list that we gave the suggested wage scale of the Association. However, in most cases we submitted a wage scale we thought was fair.

Q. After you had submitted this proposal covering wages, which was a counter to their proposal, what was then done?

A. They presented us with an agreement embodying in the agreement the suggested wage scale that we had submitted.

Q. Was that the agreement that was then later signed? A. Yes, sir.

Q. And I believe that you said that you did not know who prepar- [1343] ed that agreement?

A. I certainly did not.

Q. Then were the wages increased in accordance with that agreement? A. Yes, sir.

Q. How long did that agreement remain in effect? A. Until June 1, 1942.

Q. Over what period of time was that?

(Testimony of Gilbert Moyle.)

A. One year.

Q. What then occurred, if anything, with reference to wages?

A. About May 20, the Committee met again with me and asked me to consider the wage agreement situation for the coming year. They had with them a sheet, listing all of their employees and the suggested wage scale that they thought should be used for the coming year.

Q. And what was done when that was submitted?

A. I took it up again with our superintendent, and with other officials, such as Henry Moyle and Dr. Leslie, and we concluded to submit the wage scale which I did.

Q. Did you take it up with Mr. Sheets?

A. Yes, sir.

Q. He was the president of the company?

A. Yes, sir.

Q. Did you make a counter-proposal at that time?

A. Yes. The counter proposal was about as I suggested. We met [1344] this price increase better than 50 per cent. with this recommendation, that we knew the cost of living was going up and the things were changing rapidly, and I suggested to the committee that we make this agreement for six months rather than for a full year, that at the end of six months, they might want to submit a new wage scale which would conform with the high cost of living which was advancing rapidly.

(Testimony of Gilbert Moyle.)

Q. What was the result of that suggestion?

A. They took it very kindly and accepted our suggested wage scale.

Q. Did they adopt your suggestion touching the time of the contract? A. They did, six months.

Q. I believe you then signed this later contract?

A. I did.

Q. After you had submitted to the committee this proposal, was a contract thereafter presented?

A. Yes, sir.

Q. Did you have anything to do with the drafting of that contract? A. No, sir.

Q. Do you know who did draft it?

A. No, sir.

Q. Did the contract that was submitted to you contain the wage increase that was contained in your submission? [1345] A. Yes, sir.

Q. Who was it that served on the first committee that presented to you the wage schedule in 1941—June, 1941?

A. My recollection, there was John Anderson, K. Mills, and I think that there were four on that committee—I can't just offhand remember the other two members.

Q. Who were on the committee that submitted the proposal to you in June, 1942?

A. Mr. Peters brought the information in to me—the president, I think.

Q. Of the Association at that time?

A. Yes, sir.

(Testimony of Gilbert Moyle.)

Q. Now, on the first agreement submitted to you, and which was signed by the company, I observe that the truckdrivers are not listed, while they are listed on the second agreement, is that the fact?

A. That is correct.

Q. Will you explain that?

A. We made our arrangements with the truckdrivers previous to June 1, which was satisfactory with the truckdrivers and complied with their wishes. [1346]

Q. Now, do you know a man by the name of Thomas Brandt? A. Yes.

Q. When did you first become acquainted with him? [1352]

A. My first real contact with Mr. Brandt was in the summer of 1939.

Q. Was that before or after a meeting on the Refining Company property at which Mr. Rosqvist and Mr. Brandt were present?

A. Well, I am not certain of that date.

Q. Whether it was——

A. Before or after. I know that Mr. Brandt called me in August of 1939.

Q. What was the purpose of the call?

A. Mr. Brandt said that he understood that we were doing some new constructing at the plant, and wanted to talk to me, and I said "Fine, come on out."

Q. Did he come?

A. He came out immediately.

Q. What was the conversation about?

(Testimony of Gilbert Moyle.)

A. He asked me about the construction that we were going to do, and within a very few minutes, we agreed that any new construction at the plant, that he would allow the union craftsmen of Pocatello to do it and work alongside our employees.

Q. What was done by way of following that up?

A. That was followed up immediately, and we hired bricklayers and so forth at the plant to construct the work that we had under consideration.

Q. What was the understanding with reference to future construction? [1353]

A. We also agreed with Mr. Brandt at that time that any future construction, new construction, we would let the union craftsmen do it.

Q. That would be strictly a union job?

A. Yes, sir.

Q. What did you do in response to that understanding, on new construction thereafter?

A. Well, we had one piece of construction there, an asphalt plant, we spent \$60,000 on.

Q. How was that constructed?

A. That was constructed all by union labor.

Q. And next?

A. We constructed a third boiler and boiler house in addition to our steam capacity at the plant that was all done——

Q. What was the size of that construction work?

A. That is quite a large construction job. It is around 150 or 200 h.p. boiler, and my recollection is that that job probably cost seven, eight or nine thousand dollars.

(Testimony of Gilbert Moyle.)

Q. State whether or not that was a union job?

A. It was.

Q. Now, next? A. We constructed——

Q. That is, eight or nine thousand dollars was the cost of the construction outside of the purchase of the boiler, I understand? [1354]

A. No, it didn't run quite that high, as far as labor cost was concerned.

Q. What would be your judgment as to the labor cost? A. Well, our records would——

Q. Well, your best estimate?

A. Well, several thousand dollars involved.

Q. All right, take the next one.

A. Built an addition,—we built an addition between the two main furnaces, and that was likewise done by union labor craftsmen.

Q. What was that addition called?

A. I have always called it a super heater—it is an additional furnace, is what it is, to the two furnaces that we have.

Q. What else was done?

A. Well, we had various small jobs.

Q. Directing your attention to the office building, do you recall in addition to the office building?

A. Yes, we spent between two and three thousand dollars on the office building which was built by union labor. That was in 1941.

Q. Now, what was the understanding with Mr. Brandt, if any, touching normal repairs and necessary substitutions?

(Testimony of Gilbert Moyle.)

A. Mr. Brandt agreed with me that we would do our own normal repairs and maintenance with our own crew, without any interference from the Local Unions here.

Q. Now, when these repairs were being made, it is a fact, is it not, that the Idaho Refining Company's employees were working [1355] there over an extended period of time?

A. They were working right together all the time.

Q. With whom?

A. With the union craftsmen.

Q. Did Mr. Brandt ever say anything to you with regard to the truckdrivers at that time?

A. No, sir.

Q. Was any mention made of them?

A. Never a word.

Q. Now, Mr. Moyle, have you personally discussed with any, or asked any prospective employee, whether or not he belonged to a labor union?

A. No, sir.

Q. Have you ever discussed labor unionism with the employees individually? A. No, sir.

Q. Have you ever discussed it with them collectively at any time? A. No, sir.

Q. What has been your attitude in the plant there and as manager of the plant, with respect to labor unionism?

A. Well, I think that it has been very fair. We have attempted to get along with them and work

(Testimony of Gilbert Moyle.)

with them and it was perfectly all right with me, whether they were union or non-union.

Q. Did it make any difference whatever whether they were union or non-union? [1356]

A. No, I have attempted to hold the good-will of the people of this town.

Q. What has been the attitude as to what the employees could do, belong to a union or what?

A. Suit themselves.

Q. Have you ever advised them to that effect?

A. I never advised them either one way or the other. [1357]

Q. Where were these accidents with respect to the items of property covered, with the larger trucks, or with the automobiles or with the smaller units?

A. Oh, I would say 95 per cent. of our losses were with our transports. I think that a record introduced here will show that exactly.

Q. Yes. Where were these transports used?

A. They were used to transport gasoline from our refinery to our customers, from the river to the bulk plants, and from Salt Lake here and here to Salt Lake.

Q. Were they the units driven by these truck-drivers? A. Yes, sir.

Q. Did you ever make any observation touching the speed of these transports upon the highway?

A. Well, I drove every year about sixty or seventy thousand miles.

Q. Yourself?

(Testimony of Gilbert Moyle.)

A. Yes, in my own car, and I naturally would come across a truck driver about every four or five hours a day, and without exception, I can say that they were exceeding the speed which we had asked them to please not do.

Q. Then what did you do with them?

A. I would take it up with their foreman, and tell them that their speed had to be cut down, that they were not only endangering lives and property, but were making short lived the life of [1362] our trucks; they were cutting down the mileage that was in the trucks.

Q. Did you discuss that yourself with the truck-drivers? A. Yes.

Q. What response did you get?

A. Well, I think that our record speaks for itself,—not too good.

Q. To what do you attribute this speed,—why did they engage in it, if you know?

A. Well, there were several reasons. The drivers were anxious to put in as many hours as possible, and naturally, if they were delayed along the way, or took time out at hamburger stands, or visiting, they would make that time up.

Q. Do you know of accidents that were caused by speed? A. Yes, sir.

Q. State some of them?

A. I think most every accident we had was caused by speed—poor calculation of the speed that they were driving.

(Testimony of Gilbert Moyle.)

Q. Now, did you receive a telegram dated November 10, 1941, from these insurance companies?

A. Yes, sir.

Q. Is that the telegram that has been introduced in evidence as Board's Exhibit 22, which I now hand you?

A. Yes, this is the telegram.

Q. What did you do when you received that telegram? [1363]

A. We immediately——

Q. Don't say "we".

A. Idaho Refining Company.

Trial Examiner Riemer: When did you receive it, first?

The Witness: We received that telegram on November 10.

Q. (Mr. Merrill): Whom do you mean by "we"; did not you yourself receive the telegram?

A. Yes.

Q. What did you do?

A. I immediately showed it to Mr. Copening.

Q. Then what did you do?

A. We both immediately started to look for new insurance.

Q. Individually, or collectively?

A. Collectively and individually.

Q. What did you do personally?

A. Naturally I had to call Salt Lake, and notified the president, which he had warned me before that it was coming. It wasn't a complete surprise.

Q. Did you call Gilbert Sheets, the president of the company?

A. Yes.

Q. What is the fact as to whether or not you read him the telegram, or merely quoted the contents?

(Testimony of Gilbert Moyle.)

A. I read him the telegram.

Q. Then what did you do?

A. I thought that we had better get busy and get this [1364] insurance. We had orders to go out and 7 days was a mighty short time to get set up again.

Q. What was the fact as to whether or not you could operate without insurance?

A. We could not operate without insurance.

Q. Why?

A. We were not financially able to operate and carry it ourselves, and the Interstate Commerce Commission rulings would not allow us to operate without it.

Q. What was the next thing that you did after talking with Mr. Sheets in connection with this information in the telegram?

A. We contacted Mr. Turner here in Pocatello, and told him of our situation, and of course he knew it.

Q. What did he say?

A. He said that it looked tough to him, that he doubted if he could help us at all. He certainly could not with the companies that he was representing.

Q. At that time, where was Henry D. Moyle?

A. In Salt Lake—no, I think Henry D. Moyle was in San Francisco.

Q. Do you know when he returned from San Francisco?

(Testimony of Gilbert Moyle.)

A. I think that he returned from San Francisco about the 12th.

Q. The 12th—— A. Of November, 1941.

Q. At that time, what position did Henry D. Moyle hold with the [1365] company?

A. Vice-president.

Q. What other position? A. And counsel.

Q. When did you communicate, if at all, with Henry D. Moyle?

A. Henry D. Moyle came up to the plant on the 13th.

Q. Of November?

A. On November 13, 1941.

Q. In the meantime, between the time that you had received this telegram and the time that Henry D. Moyle came up, what, if anything, had you done in an effort to get insurance?

A. Well, we had called several people, and they were working on submitting the policy to their companies——

Trial Examiner Riemer: You mean insurance brokers?

A. (Continuing): Yes, insurance brokers. We called Idaho Falls, Pocatello and Salt Lake. [1366]

Q. When Henry D. Moyle came up on the 13th of November, 1941, what was done if anything, with reference to the insurance and the contents of that telegram?

A. Well, Henry discussed with me the fact that he had taken the matter up with Mr. Sheets and the insurance agents in Salt Lake had contacted

(Testimony of Gilbert Moyle.)

him, and that it would be absolutely necessary to discharge the drivers.

Q. What did you determine to do, if anything, then?

A. I immediately instructed Mr. Rice to make the necessary arrangements to discharge the drivers.

Q. Did Henry D. Moyle tell you that at the time of his conversation, what determination was arrived at with the president of the company, Mr. Sheets, touching discharge of the drivers?

A. Yes, he did.

Q. What, if anything, did you say with reference to that matter?

A. Well, I said that it was a pretty tough problem, and we had the gasoline to go out, but if it was absolutely necessary, there would be nothing else for me to do.

Q. What did you do? [1367]

A. I instructed Mr. Rice to discharge the drivers and pay them off as they came in off the runs, upon completing what runs they were on.

Q. What day was it that you gave that instruction?

A. That was the afternoon of the 13th of November, 1941.

Q. When was that perfected?

A. I think that it was pretty well completed on the morning of the 14th and through the 14th of November, 1941.

Q. At that time, did you know whether or not

(Testimony of Gilbert Moyle.)

any of these drivers belonged to Local 440, or any other outside labor union? A. No, sir.

Q. Did you know at that time whether or not Archibald belonged to a labor organization or had anything to do with respect to getting members for Local 440? A. No, sir.

Q. Did the affiliation of these drivers, or Archibald or any of them, with any outside labor organization, have anything to do with arriving at your conclusion? A. No, sir.

Q. Was it in any sense considered?

A. No, sir.

Q. Was it known by you? A. No, sir.

Q. So far as you know, was it known by Mr. Moyle or Mr. Sheets or any other officer of the company? [1368]

A. I am sure it wasn't.

Q. Did it enter into the picture at all?

A. It did not.

Q. Did you know a man by the name of Wayne Douglas? A. Yes, I did.

Q. What was he doing?

A. Wayne Douglas was driving a unit for us.

Q. Do you know of an accident that he had about that time, or shortly before?

A. Yes, sir.

Q. Where was that accident?

A. It happened at Weiser, Idaho.

Q. Did you talk to Douglas about it?

A. I did at the time, yes.

Q. Did you go to Weiser?

(Testimony of Gilbert Moyle.)

A. I just happened to be in Weiser. As a matter of fact, I was in Weiser when Wayne pulled out with the truck for Boise.

Q. Did you talk with him?

A. Well, I might have said "hello", at that time.

Q. When he pulled out of where, for Boise?

A. At Baker, Oregon, going to Boise.

Q. Were you at Baker? A. Yes.

Q. Yes, you said when he pulled out of Weiser—

A. No, he left Baker at the time when I was there, going to [1369] Boise with a load of gasoline.

Q. Then when did you get to Weiser?

A. It was several hours after he left a phone call came and said that our truck had cracked up in the residence section of Weiser.

Q. How far is Baker from Weiser?

A. Oh, offhand, I would say that it is 150 miles—no, it wouldn't be that far—possibly less than 100 miles.

Q. Now, did you see Wayne Douglas after you arrived at Weiser?

A. I went over to Weiser, and was immediately directed to the wreck.

Q. Where was it?

A. The wreck was right in the middle of the town of Weiser in the residence section.

Q. How did the equipment appear to you?

(Testimony of Gilbert Moyle.)

A. Well, I can't understand how a driver could get a truck——

Q. Well, pardon me. What was the appearance of it?

A. The equipment was upside down, smashed up against a tree right in the residence section.

Q. Was there a crossroad there?

A. Yes, it was a cross street—it was a residence section—it was split by blocks.

Q. But at the point of the wreck, was it in the middle of the block, or at a cross street? [1370]

A. No, he had made the turn onto the cross street.

Q. What else did you observe of the physical conditions?

A. Of course, the gasoline was running all over the town. It got into the sewers. They were afraid somebody would light up a match, and if so, we would have had the whole sewer system to repair.

Q. Were there any policemen around?

A. Yes, the fire department patrolled the streets for two or three blocks around.

Q. Did you talk to Douglas?

A. Yes, I did. I went directly from the wreck to where they had taken him.

Q. What did he say as to how the accident occurred?

A. He made no bones about saying that it was just fast, reckless driving.

Q. What did he say to you?

A. That's what he told me, when I asked him.

(Testimony of Gilbert Moyle.)

I said, "How in the world could you dump a truck up in the middle of Weiser?"

Q. What did he say?

A. He said it was just fast, reckless driving.

Q. Did he say where he had been?

A. I said to Wayne, "What in the world are you doing in Weiser, you are supposed to go through to Ontario", and he said, "Oh, I have a sister and a girl friend here."

Q. Did you say anything about the discharge of Douglas at that [1371] time?

A. When I left the house, Earl Stiff was with me, I said, "Lay him off, fire him right now, I am through with such driving."

Q. Explain the relationship of Stiff?

A. He was the manager for us at Baker, Oregon, with our truck operation from the Columbia River into the Boise area.

Q. What was the relationship between Stiff and the truckdrivers?

A. Well, Stiff was our manager there, and employed the truckdrivers and hired and fired them at his will.

Q. What was the relationship between the Idaho Refining Company and him with reference to truckdrivers?

A. Mr. Stiff had these two trucks in the beginning, and we purchased them. We gave Mr. Stiff stock in our company for the trucks.

Q. Was there a period of time when Stiff had control over them? A. Yes.

(Testimony of Gilbert Moyle.)

Q. What was that?

A. The period was from October 10 approximately, until the river closed, about January 5 of 1942.

Q. Then he had the power to control Wayne Douglas?

A. Oh, yes; he had power to hire and fire him.

Q. Was Wayne Douglas discharged by Stiff, if you know? A. He was.

Q. That was when? [1372]

A. He was discharged immediately upon Stiff's return to Baker.

Q. How long was that after the accident?

A. I would say that it was the next day or two days. I was not at Baker at the time that he discharged him.

Q. (Trial Examiner Riemer): When was this accident at Weiser?

A. To the best of my knowledge, the accident, I haven't looked it up on our records, it was the 20th of October.

Q. (Trial Examiner Riemer): And Stiff discharged Douglas?

A. I wasn't there. It is my understanding that Stiff did. He should have discharged him the next day if he followed my instructions.

Q. (Mr. Merrill, continuing): Did you later learn that he was re-employed?

A. Yes, I did through our office, at Pocatello.

Q. When did you get that information?

A. That information came to my attention, well,

(Testimony of Gilbert Moyle.)

I would say that it was somewhere around about the 16th of November—maybe the 17th.

Q. After the other truckdrivers had been discharged? A. Yes.

Q. What did you do when the matter thus came to your attention?

A. I got in touch with Frank Copening and told him that I couldn't understand why Wayne Douglas was back on our payroll.

Q. Was he then discharged the second time?

A. I think that finally Mr. Stiff himself concluded that for the [1373] best of the service, they let him go.

Q. Why was Wayne Douglas discharged?

A. I think that it was because of this wreck entirely.

Q. Did his discharge have any connection with the discharge of the other truckdrivers on the 14th of November? A. No, sir.

Q. Did you know a man by the name of Archibald? A. Yes, sir.

Q. How long have you known him?

A. Well, I guess that I knew him from the time that he started work.

Q. Where did he work?

A. He worked in our garage.

Q. Had you ever observed him at his employment?

A. Well, when I am in town, which is not too often, I am in the garage at least once or twice a day.

(Testimony of Gilbert Moyle.)

Q. Were any complaints made to you touching the conduct of Archibald?

A. Yes, I had complaints from Brown and Mr. Rice that he was laying off too often and had been drinking.

Q. Whom do you mean by Brown?

A. Brown was in charge while Rice was out of the garage.

Q. Is he the man who testified here yesterday?

A. Yes.

Q. What did you do with reference to those complaints? [1374]

A. I told Mr. Rice that I didn't see why he put up with him any longer.

Q. What did Rice say?

A. Rice said, "As soon as we complete the work that we have on hand, we will get rid of him."

Q. When did Rice say that to you?

A. I think that was somewhere around the first of November.

Q. Did you have any conference personally with Archibald? A. No, sir.

Q. Was there any effort made on his part to have a conference with you?

A. Yes, he called me one day from the shop and said that he would like to see me.

I said, "I am busy, and I guess you are, why don't you come in after 4:30 or five o'clock when I am not busy?" And he said that he would, and that is the last that I ever heard of him.

Q. Did he come? A. No.

(Testimony of Gilbert Moyle.)

Q. Did you ever have any other telephone call from him, or any information submitted to you by any office employee of his other calls?

A. No, and I was in the garage continuously, probably once or twice a day after that while I was in town.

Q. Thereafter? [1375] A. Yes.

Q. Did he ever approach you—

A. He never approached me at all about the conference, whatever.

Q. Did you have any information of any union activity engaged in by Archibald?

A. No, I didn't know that he was a member of a union.

Q. Did you know that he was discharged—I mean to say prior to his discharge, did you know that he was to be discharged at any particular time?

A. I knew that he was going to be discharged, yes, from about the first of November. I didn't know that he was going to be discharged on the day that the drivers were discharged.

Q. Who did the discharging of Archibald?

A. Kermit Rice.

Q. Did you know of the incident prior to its happening, or was it reported to you after?

A. Reported to me after.

Q. By whom? A. By Mr. Rice.

Q. Now, Mr. Moyle, do you recall an incident when Mr. Brandt and Mr. Thompson came to the refining company office on November 14, 1941?

(Testimony of Gilbert Moyle.)

A. Yes, sir.

Q. Had you seen Mr. Thompson before that day?

A. I don't believe that I ever had. [1376]

Q. Did he come into your office?

A. No, they came into Mr. Copening's office.

Q. Were you and Mr. Copening in Mr. Copening's office when they came in? A. Yes.

Q. Relate what was said and done?

A. I said nothing, and Mr. Copening said to the gentlemen, "What do you want?" And they said, "We have a blank contract here that we would like to have you look at."

Q. Who did the speaking?

A. I think that it was Mr. Brandt.

Q. What did Mr. Copening say to that?

A. He took the piece of paper and read the contents of it, then he looked up and said, "We will be very glad to consider this and I will take it up with our counsel at Salt Lake."

Q. Did Mr. Brandt make any comment to Mr. Copening about reading that at your leisure, whenever you wanted to?

A. I think that he did, he said it would be all right, "We would like a meeting with you later."

Q. Then what was said, if anything?

A. Well, I think that it was agreed upon to meet about a week later.

Q. Then what occurred, if anything?

A. That was all. They left.

Q. Was there a subsequent meeting? [1377]

(Testimony of Gilbert Moyle.)

A. Yes, this meeting occurred later with Mr. Rosqvist, Mr. Evans and Mr. Brandt.

Q. Where did it occur?

A. That occurred in the company office.

Q. Do you remember the date—could it have been November 21, 1941?

A. I think that was about the time, yes.

Q. Now, I want to go back to the meeting of November 14, at the time Mr. Brandt and Mr. Thompson came into the office, had the truckdrivers been discharged prior to the time Mr. Brandt and Mr. Thompson came to the office on the 14th?

A. Yes.

Q. Had their checks been made out, if you recall?

A. I think that they had all been made out, and a good part of them had been received by the drivers.

Q. Was there any connection so far as you know, between the discharge of the drivers and the appearance of Brandt and Thompson?

A. Well, I don't know that there was. They came out somewhere around noon on the 14th.

Q. Had you ever been apprised prior to that time that the truckdrivers were members of any union? A. No.

Q. Or Local 440? A. No. [1378]

Q. Did you know anything whatever about their outside union affiliations? A. No. [1379]

Q. Mr. Moyle, did Wayne Douglas come to Pocatello after the discharge of the drivers on the 14th

(Testimony of Gilbert Moyle.)

of November, and at the time that he was discharged?

A. I saw Wayne Douglas around the plant, I think, on the 22nd of November or the 21st.

Q. Did you have a talk with him?

A. No more than to say "Hello"; I thought that he had come in to see Frank Copening.

Q. State whether or not you showed Wayne Douglas the telegram which cancelled the insurance? A. No, I did not.

Q. State whether or not you told Wayne Douglas at that time in substance or effect, that he was discharged for the same reason that the other drivers were discharged?

A. He knew why he was discharged.

Q. I asked if you said that to him?

A. No, I did not. He knew why he was discharged. [1384]

Q. (Mr. Merrill, continuing): Did you say to Mr. Douglas, in substance or effect, that he was discharged for the same reason that the other truckdrivers were discharged?

A. No, I did not.

Q. Did you have any conversation with him touching his discharge?

A. No, sir; I did not, except at the time I was at Weiser with Stiff there was no conversation.

Q. I mean with Douglas? A. No, sir.

Q. Do you recall of knowing a man by the name of Trevor Moss? A. Yes, sir.

Q. Did Trevor Moss come into the office when

(Testimony of Gilbert Moyle.)

you were present and make application for employment?

A. He came in to Frank Copening's office.

Q. Were you in the office at the time?

A. I was in and out of the office during the day. I think that I was in there a lot of the time while Moss was in these.

Q. Did you engage in any conversation with Moss at any time?

A. I did not, no, sir; Frank Copening did all of the talking.

Q. Was there any request, or questions asked of Mr. Moss as to whether or not he belonged to any labor union?

A. Not while I was there.

Q. Do you know of any such request ever having been made to him?

A. No, sir; I do not. [1385]

Q. Did you ask him any such question?

A. No, sir.

Q. Was there any comment made by you, or in your presence to the effect that, "We",—meaning the refining company—"have a union of our own that they can join at any time"?

A. No, sir.

Q. Did you hear Mr. Moss make any comment touching unionism at all, or whether he belonged to any union?

A. I don't recall that Mr. Moss stated that he belonged to any union.

(Testimony of Gilbert Moyle.)

Q. Was such matter discussed with Mr. Moss in your presence?

A. No, sir; there was not.

Q. Did you ever hear of it having been discussed with him? A. No, sir.

Q. Did you know a man by the name of Loren McBride? A. Yes, sir.

Q. When did you first become acquainted with him?

A. The exact date, I can't set, but we hired McBride at the refinery in let us say, 1940, the fall of 1940, he drove here for us for about a year, I guess, or something like that, maybe a little longer.

Q. Did you have a conversation with him in Boise, or in that locality, on or about the latter part of the year 1941 at the Bulk Sales Plant?

A. Well, I recall I was in Boise, I have been going over about [1386] once every two weeks, and I occasionally see the drivers there unloading, and say "Hello", and I wouldn't doubt but what McBride was correct.

Q. Do you recall a conversation with him in which the question of membership in a labor union was discussed?

A. I had no conversation outside of the fact that I might have said "Hello, where are you going with your load?" or "When are you leaving?"

Q. Did you observe him at any time with a union button on him?

A. I wouldn't know a union button if I would see one.

(Testimony of Gilbert Moyle.)

Q. I will ask you if you ever at any time said to him, or did say to him at the bulk plant in Boise, about the first of October, 1941, that, "The wearing of that button is not going to do you any good with our bunch"? A. Absolutely not.

Q. Did McBride say at that time, or any other time, "What if we get your bunch to join?" To which you replied that you would fire every one of them? A. No.

Q. Did you have any such conversation?

A. No.

Q. In substance or effect?

A. Absolutely not.

Q. Did you say in substance or effect, in response to a question purported to have been asked by McBride, "What are we going to do [1387] for drivers?" and to which he said that you replied, "I can get drivers or I will get old women to drive"?

A. That is a funny statement—no.

Q. Did you make any such statement?

A. No, of course not.

Q. Was the subject matter upon which these questions have been asked, ever discussed between you and Mr. McBride?

A. No, it is a fairy story.

Q. Did you ever discuss with McBride the subject of labor unionism?

A. No, sir; I didn't.

Q. Or membership of any employee in the union?

A. I knew McBride was a member of the union.

Q. You did know that? A. Yes.

(Testimony of Gilbert Moyle.)

Q. Did it make any difference to you?

A. No, certainly not. I knew that he worked here, knew our men and they were personal friends, and I knew when I brought him over here, that he was a union man coming back to his friends, and it made no difference to us.

Q. Mr. Moyle, state whether or not the Idaho Refining Company since before March, 1940 on various, or any occasions, through you, restrained or coerced any of its employees in the exercise of their right of self-organization or bargaining collectively through representatives of their own choosing? [1388]

Mr. Penfield: I object to that on the ground that it calls for a conclusion.

Trial Examiner Riemer: Let the witness answer.

A. No.

Q. (Mr. Merrill, continuing): Have you ever attempted to discourage membership in Machinists Local 198 or Teamsters Local 440 or 983?

A. No, sir.

Q. Or either of them? A. No sir.

Q. Or any other labor organization?

A. No, sir.

Mr. Penfield: Let the record show that we have the same objection to all those questions?

Trial Examiner Riemer: Yes.

Q. (Mr. Merrill, continuing): State whether or not since November 14, 1941, you as general manager of the Idaho Refining Company have inquired of persons applying for employment as truck driv-

(Testimony of Gilbert Moyle.)

ers and of said employees hired as truck drivers, whether or not they belonged or had belonged to the Teamsters Union or to any other outside labor organization? A. I have not.

Q. Have you ever advised such persons, or any other persons, that the company was opposed to membership of such employees in such unions?

[1389]

A. No.

Q. I believe that you have testified heretofore, have you not, that you had nothing whatever to do with the organization of the Association?

A. That is correct, yes, sir.

Q. And have never had any membership in it or any connection with it? A. No, I haven't.

Q. Mr. Moyle, state whether or not in June, 1941 the Idaho Refining Company through you as its manager caused a meeting of the membership of the Association to be held in order to discourage or defeat concerted activities of the employees acting independently of said Association?

A. I did not.

Q. Or that you dominated or interfered with the conduct of said meeting? A. No, I did not.

Q. Did you have any knowledge of any such meeting?

A. No, except when the committee approached me in June with their recommendations for their Association.

Q. Was that a meeting of the Association, or a meeting of the committee from the Association?

(Testimony of Gilbert Moyle.)

A. It was a meeting of the officers or committee from the Association.

Q. What is the fact as to whether or not you caused a meeting of [1390] the Association, or membership of the Association to ever be called or held?

A. No, I have never.

Q. And state whether or not you have ever met with the membership of the Association in a meeting assembled? A. I have not. [1391]

Cross Examination

By Mr. Penfield:

Q. Mr. Moyle, with respect to this agreement which was signed in June, 1941, with the Association, did I understand you to say that you met with a committee that presented you with a wage scale, and then you turned over that wage scale to the other officials of the company?

A. We discussed that wage scale with the other officials, and with the superintendent and came to a conclusion on the wage we thought would be fair.

Q. Now, this was not a committee of the Association, isn't that correct?

A. We didn't discuss with the committee our proposal, no, we just handed them a final figure that——

Q. No, that isn't the question. Do you know whether this committee you met with was a committee of the Association or not? A. Yes, I do.

Q. Was it a committee of the Association? [1392]

A. Yes.

(Testimony of Gilbert Moyle.)

A. (Continuing): As I recall, that was a committee of the Association, and my mind runs back now, I think Max Pope was a member of that committee, and he was secretary of the Association at that time, so I know that it was a committee of the Association.

Q. Did they tell you that they were representing the [1393] Association?

A. Yes, and Max Pope was secretary of the Association, as I recall now, and he was on this committee.

Q. This meeting was sometime in May, was it not, 1941? A. It was before June 1.

Q. Was this the only meeting that you had with a committee of any sort?

A. Well, for what purpose?

Q. For the purpose of discussing wage increases.

A. You mean before June 1?

Q. Yes. A. Yes, at that time it was.

Q. The next meeting you had was a meeting that you had with the membership or with the members?

A. I didn't meet with them.

Q. Isn't it correct that you attended a meeting in the office shortly before June 1, Mr. Moyle, at which a substantial number of the employees were present, and at that time you set forth the proposals of the company with respect to the wage rates?

A. No, the proposal was just handed to the committee, and they acted on it.

Q. You did not attend that meeting?

(Testimony of Gilbert Moyle.)

A. I didn't attend any meeting of the Association since I have been there at the plant.

Q. You didn't appear in the meeting to give the Company's [1394] answer, is that what you mean?

A. That is exactly what I mean; I didn't attend any of their Association meetings.

Q. To whom did you give the company's reply?

A. This committee.

Q. The same committee that visited you before?

A. The same committee that brought the information—the recommendation from the Association.

Q. But those were the only two meetings that you had with that committee, is that correct?

A. You mean of June 1?

Q. I mean the meeting at which they presented a schedule, and the meeting at which you gave them your schedule?

A. We had the two meetings in regard to the June 1 wage scale.

Q. And they accepted the schedule as you presented it, is that correct? A. Yes.

Q. And that was embodied into the agreement?

A. Then they brought an agreement back——

Q. You suggested that they draw up an agreement embodying that? A. Who suggested it?

Q. You suggested it, didn't you?

A. I think that it was mutually agreeable that we have the agreement in writing.

Q. I asked you—— [1395]

A. I don't know that I did, no.

(Testimony of Gilbert Moyle.)

Q. It was following the signing of this agreement that you had a meeting with the truckdrivers, was it not?

A. We had several meetings following that.

Q. I mean a meeting at which you discussed a change in the wage scale of the truckdrivers?

A. We had several meetings.

Q. Well, did you have a meeting following this meeting with the committee?

A. We had a meeting and several others.

Q. Was this the meeting where you spoke of and discussed the wage scale, and a new wage scale was announced?

A. The wages were finally discussed with Mr. Copenig, and with the truckdrivers—not myself.

Q. Who announced the change from the hourly to the monthly scale? A. Mr. Copenig.

Q. You did not attend that meeting?

A. No, sir. [1396]

Q. So, when this contract was entered into, although the scales were set after the truckdrivers' names, there was no negotiation for upward revision for the truckdrivers?

A. There was no change in their wage at that time, correct.

Q. And was that the only meeting—were these two meetings that you refer to with Mr. Peters the only meetings that you had with the representatives of the Association with respect to the negotiation of this contract?

A. I didn't get the last of your question.

(Testimony of Gilbert Moyle.)

A. The only reason for not answering it was that we worked thru Turner, who was the agent of the writer of that letter.

Q. But you didn't take any steps?

A. Oh, yes, we did, absolutely.

Q. What steps?

A. We took every step possible out there that we knew of to stop the continuance of accidents.

Q. Well, what was every step that you took?

A. As I have suggested, admonishing the people in control, Frank Copening and Kermit Rice, to talk to the drivers, and we spent about \$15,000 last year on a new garage for one simple purpose—to try to give better service and try to put the trucks in better condition and eliminate any possible chance of this [1409] cancellation of the policy and so forth. They were going to rate us up, that is another thing, and I was concerned about that. We were paying a big rate, and they were talking about putting it up.

Q. As a matter of fact, no concrete program of any kind was attempted until after the first of this year, is that correct?

A. No, it is not correct.

Q. You stated that you made personal observations of the drivers on the road, and observed that they were driving at excessive speeds. Did you make any records of who the drivers were, how fast they were going—

A. I think that in practically every case I took it up upon my return to the plant with Mr. Rice

(Testimony of Gilbert Moyle.)

and Mr. Copening and asked them to be sure they followed through on my recommendation.

Q. What did you recommend?

A. That they cut the speed down. We recommended governors on all the trucks, and I think that they were on all the trucks.

Q. You didn't keep any record of the number of times that you observed this, or the particular drivers involved?

A. It was so many times on the road, that I can't set any figure to it.

Q. But you didn't keep any records?

A. You mean as to the number of times that I saw the trucks on the road? [1410]

Q. That is the question that I asked.

A. No, I didn't—of course not. [1411]

Q. How did it happen that the drivers were discharged on the 14th instead of at least letting them finish out the pay period which ends on the 15th, as I understand it?

A. Well I think it was the thought of Henry Moyle, and I think that he can possibly answer that. You had better ask him.

Q. Do you know how it happened?

A. No, I don't.

Q. Was it discussed at your meeting?

A. It was discussed that we were going to change our drivers in order to comply with the new carrier.

Q. Was the question of discharging them on the 14th, as opposed to the 15th, discussed at all?

(Testimony of Gilbert Moyle.)

A. I don't get that question.

Q. How does it happen that they were discharged on the 14th rather than letting them work through their pay period?

A. Because we were instructed by Henry Moyle on the 13th.

Q. I asked you if the question of carrying them on through the 15th was discussed at your meeting with Henry Moyle? A. I don't think so.

Q. Now, with respect to Mr. Douglas, did I understand you to say that you instructed Mr. Stiff to discharge him? A. I did.

Q. And that was on the day of the accident?
[1412]

A. Yes, sir.

Q. Which occurred, I believe, on October 16?

A. At Weiser, yes.

Q. And you knew, did you not, that Mr. Douglas resumed work by the 29th of October and continued to work steadily thru until the 21st of November of the 20th of November?

A. No, I didn't.

Q. He was on the payroll of the Idaho Refining Company, wasn't he?

A. I have later found that out. You see those payrolls came in from Baker, I think, twice a month, as I recall, and I don't examine them on every payroll date, so it wasn't, I think, until the 21st that I found that Wayne had been on our payroll again.

(Testimony of Gilbert Moyle.)

Q. You never had any further conference with Mr. Stiff in regard——

A. Not in regard to Wayne, no. [1413]

Q. Touching the decision to discharge the drivers, concerning which you have been questioned, when Henry Moyle came up from Salt Lake City, state whether or not you were informed that that decision to discharge the drivers had already been made by Mr. Moyle and Mr. Sheets?

A. I think it had.

Q. So you were simply advised——

A. I was advised to discharge them, and I went ahead and did so. [1419]

Q. (Trial Examiner Riemer): Can you state generally the ICC rule governing the insurance of transport trucks?

A. No, I can't.

Q. May I see Board's Exhibit 7, Mr. Moyle, can you recall and give me a list of the supervisors, those who possessed supervisory authority at the Idaho Refining Company in October, 1941?

A. I believe that I can.

Q. Start from the bottom and go up, or from the top and go down.

A. We will start with the top.

Q. I would like to have you fix it, if you can, about October, 1941.

A. I think I can.

Q. All right.

A. We will start with Mr. Miller, the plant superintendent.

Q. What is his first name?

(Testimony of Gilbert Moyle.)

A. What is his name? W. M. Miller, and under W. M. Miller, we had E. V. Smith.

Q. What was he?

A. He was assistant to Miller, and we had Mr. Simpson, who was our yard foreman—Victor Simpson, I think; and we had Mr. Farnsworth who was in charge of our laboratory who assisted the superintendent some. That pretty well takes care of the [1420] set-up there. Then we had Mr. Henninger, who was in charge of the treating and loading dock. We had Mr. Rice in charge of the garage. That pretty well completes it except our office force. We had in the office mainly Mr. Copening under myself.

Q. Frank Copening?

A. Yes, Captain Frank Copening.

Q. He was the assistant secretary?

A. He was my assistant secretary, yes.

Q. And you were the general manager?

A. Yes.

Q. And Mr. Sheets?

A. Mr. Sheets was our president.

Q. And Henry Moyle? A. Vice-president.

Q. Now, Mr. Moyle, come down to the fall of 1942, did that list differ?

A. A little bit, yes.

Q. What was the changes?

A. Mr. Miller isn't with us any longer. Mr. E. V. Smith was advanced to superintendent. In the garage, we have given Mr. Rice an assistant—Mr. Sheets.

(Testimony of Gilbert Moyle.)

Q. What is his first name, is that Heber Sheets?

A. Yes, Heber Sheets.

Q. What do you call him?

A. Well, Heber Sheets is taking care of the time records and [1421] time cards, assisting in the student trips with drivers, and taking care of the store or storeroom.

Q. Are there any other changes in that list?

A. Yes, Mr. Sheets is no longer president.

Q. And that office has not been filled?

A. No. I think that list remains the same with the exception that Mr. Farnsworth is assisting Mr. Smith more than he assisted Mr. Miller, and he is assistant superintendent.

Q. Was Copening still secretary in June, 1942?

A. Yes, I believe that he left on the 10th and up to the 10th he was still an officer.

Mr. Penfield: I believe there was one omission in that list. I don't believe you had the office of treasurer.

The Witness: Albertson is now our treasurer.

Q. (Trial Examiner Riemer): Who was treasurer in 1941?

A. In 1941, Mr. Peterson was.

Q. Is that John H. Peterson?

A. John H. in 1941, and Bert Albertson is now.

Q. Who owned the trucks that were driven out of Baker, Oregon, Mr. Moyle?

A. We owned the trucks from October 1 until I think about April of this year.

Q. And how many were there?

(Testimony of Gilbert Moyle.)

A. We had three, I think, and possibly a fourth.

Q. Was that in addition to the truck driven by Douglas?

A. We had two others in addition to the truck driven by Douglas. [1422]

Q. Were any other truckdrivers up at Baker discharged in November?

A. No, I think that was the only difficulty we had on that, on wrecks.

Q. Douglas was the only one discharged?

A. I think so.

Q. Nevertheless, those trucks driven out of Baker, including Douglas' truck, were covered by this policy?

A. Yes, all covered by our policy, yes, sir. [1423]

Q. All right, can you tell me, Mr. Moyle, who it was that requested a check-off on Association dues? A. I don't get that question.

Q. When was the Association first granted a check-off of Association dues—do you know what a check-off is?

A. No, I don't think that I get that question—you mean deduction of dues from the payroll?

Q. Yes, from the payroll.

A. I am afraid that I can't answer that. It seems to me that it has been going on some time from the start. I can't tell you that.

Q. Do you know who requested it?

A. I think that the Association members themselves, and signed slips to that effect, as I understand it.

(Testimony of Gilbert Moyle.)

Q. Yes, that is true, the Association members evidently do authorize this check-off. What I am asking you, however, is, who on behalf of the Association requested the permission to make that deduction?

A. I think that the facts of the case are that the officers of the Association asked our company if that could be done.

Q. Do you know who granted that request—what officer?

A. No, I don't. I think—I don't recall it brought to my attention, but I know that we did have—we would have to have some reason for it—

Q. You don't know who that was? [1426]

A. It seems to me that it has been going on from the beginning.

Q. That would carry it back to 1938?

A. Yes, I think that it does.

Q. Do you know if at the time that that check-off was requested there was any demand that the Association show a majority of its right to represent all of the employees?

A. No, I just think that we assumed that they represented a certain number—I didn't know how many.

Q. When you negotiated the contract with the Association in June of 1941, did you demand any proof from the Association as to its right to represent the employees?

A. Well, I knew from what Mr. Peters said,

(Testimony of Gilbert Moyle.)

that he was their president, and he did have that authority to present this schedule.

Q. You knew that John Evans was a truck driver—— A. Yes.

Q. On November 21, didn't you? A. Yes.

Q. Or had been a truckdriver? A. Yes.

Q. And a former employee? A. Yes.

Q. Did you ask the Association officers in June of 1941 to prove their majority?

A. No, I don't think so. I knew from the committee that called [1427] on us that they stated that they represented the majority.

Q. That did state that? A. Yes.

Q. Did you ask for any proof or confirmation?

A. No, I didn't ask for any written proof. We asked, "Do you represent the majority of the Association", and they said "Yes".

Q. When the contract was renewed in June, 1942, did you at that time question the Association representatives with respect to their right to represent either their members or a majority of your employees?

A. Mr. Peters came in and said that they represented the Association, and their decision to present this schedule of wages.

Q. And you accepted that?

A. I accepted that as their having the right to do so. [1428]

Trial Examiner Riemer: Thank you. That is all.

(Testimony of Gilbert Moyle.)

Redirect Examination

Q. (Mr. Merrill): Have you had occasion to pass any of your trucks being driven at such a speed?

A. Yes, I have, on numerous occasions.

Q. Have you observed the speed on the speedometer of the car that you were driving?

A. Yes, I have.

Q. And by that, could you tell the speed of these trucks? A. Yes, very distinctly.

Q. Has that happened more than once?

A. Yes, many times.

Q. Mention some of the speeds that you have observed. [1434]

A. I have passed the boys going from 45 miles up to 65, possibly even 70. I would say 65 would be a maximum speed.

Q. If the drivers speeded, what is the fact as to whether or not they would get to their destination quicker and have more leisure time?

A. Oh, yes, they would; sure.

Q. So a matter of speed would be of advantage to them? A. Yes.

Q. What is the fact as to whether or not the speed would increase their loitering time?

A. It would.

Trial Examiner Riemer: Repeat that question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Merrill, continuing): Where they

Respondent's Exhibit No. 10—(Continued)

Get the names and addresses of all material witnesses and give the Company's representative all possible cooperation. Report theft losses to Police.

The Company has claims offices in all important Cities and is equipped to render prompt service throughout the United States and Canada.

Prompt Notice To The

Company Will Insure

Immediate Service

[Cut]

Respondent's Exhibit No. 10—(Continued)

CLASSIFICATION OF MOTOR VEHICLES COVERED ON FIREMEN'S METROPOLITAN CASUALTY INSURANCE COMPANY—No. F.M.-227

Passenger Cars		Light Trucks (1½ Ton or Less)		Heavy Trucks 2 Tons or more (in excess of 2500 Gal.)		Trailer and Semi-Trailers	
Item No.	Make of Vehicle	Item No.	Make of Vehicle	Item No.	Make of Vehicle	Item No.	Make of Vehicle
1.	Oldsmobile Sedan (1937)	6.	Replaced by Ind. 11 Studebaker Truck (1937) (Motor #168863)	8.	Internat'l #5 Trk. (1932) 3240 Gal. Tank	21.	3000 Gal. Tank Semi-Trail. #11 (1939)
2.	Dodge Tudor Sed. (1935)	7.	Internat'l 1½ T. Panel Truck (1938)	9.	Replaced by Ind. #11 White 4 Ton Truck—Mot. #740940 (1936)	22.	3000 Gal. Tank Semi-Trail. #12 (1939)
3.	Packard Convert. Coupe (1939)	13.	Internat'l D-30 Pickup #13 (1940)	10.	Diamond T 2½ Ton Trk. (1938)	23.	3050 Gal. Tank Semi-Trail. #9 (1939)
4.	Buick Coupe (1940)	17.	Ford 1½-Ton Panel Truck (1940)	11.	Internat'l DS35 Gas Truck (1939) = 11	24.	3000 Gal. Tank, Semi-Trail. #22 (1939)
5.	Cadillac Sedan Model "6109" (1941)	18.	Ford 1½-Ton Panel Truck (1940)	12.	Internat'l DS35 Gas Truck #12 (1939)	26.	3800 Gal. Tank, Semi-Trail. #7 (1938)
50.	Buick Sedanet (1941)	35.	GMC 1½ Ton Model T18D (1936)	14.	Internat'l DS50 #14 (1940)	27.	3500 Gal. Tank, No. 17 Trailer (1940)
66.	Buick Sedan 2-Dr. (1941)	40.	Dodge 1½ T. Truck #25 (1940)	15.	Mack 4 to 5 Ton Truck #16 (1940)	28.	4250 Freuhof Tank Trail. #14 (1940)
Ind.	Pontiac Coupe (1941)	41.	Ford 1½ Ton Truck #10 (1939)	16.	Mack 6 to 7 Ton Tractor Type Trk. (1940)	29.	4640 Gal. Freuhof Semi-Trail. #16 (1938)
6		43.	Ford 1 Ton 300 G. Tank Trk. (1939)	19.	Internat'l DS 50—3 to 4 Ton (1940)	30.	4250 Gal. Freuhof Tank Trail. #20 (1940)
		44.	Ford 1½ Ton Trk. 300 Ga. Tank (1941)	20.	Internat'l DS 35—2 Ton Trk. (1940)	31.	3500 Gal. Tank #8 Olson Semi-Trail.
		45.	Ford ¾ Ton Express Truck (1940)	25.	Internat'l DR 60 Trk. #7 (1939)	32.	5000 Gal. Freuhof Trail #26 (1941)
		46.	GMC 1½T "AC102" Pickup (1940)	33.	White Tank Truck Model 750T #28 (1941)	36.	Kingham 3500 Gal. Tank Semi-Trailer Mod. T30D #17 (1941)
		47.	GMC 1½ Ton Tank Trk. "AC303" (1940)	34.	Mack Tractor Type Tank Mod. Lft. #26 (1941)	37.	3000 Gal. Tank Freuhof 6 Wheel Trail. #3 (1940)
		48.	Chev. 1½ Ton Stake Truck (1940)	38.	Mack 5T, 200 Gal. Tank Fuel Trk. Model LRSW (1941)	39.	Flat Back Trailer #23
		49.	Chev. 1½ Ton Truck #24 (1939)	51.	Replaced by Ind. #15—Ford 1½ T. 2500 Gal. Trk. (1939)	42.	3000 Gal. Tank Semi-Trail. #10 (1939)
		52.	Ford 1½ T. Truck 2500 Gal. Tank (1939)	56.	Internat'l 3760 Gal. Tank Truck (1933)	Indorsement #18—Freuhauf 5000 Gal. Tank Trailer (1939)	
		53.	Chevrolet 1½ T. Pickup (1931)	Indorsement #9—Kenworth Diesel & Wentwin Semi-Trail (4500 Gal) (1940)			
		54.	Internat'l C30 1½T Truck (1935)	Ind. #10—Fageol Truck & Wintwin Trail (1937)			
		55.	(Replaced by Ind. #14)	Ind. #16—Internat'l Heavy Trk. (1939)			
		Ind. #14—Chev. 1½ T. Pickup (1931)		Ind. #17—Kenworth 4-Ton Truck (1941)			
		57.	Internat'l 1000 gal. Tank Trk. (1936)	Ind. #19—Freuhauf 5000 Gal. Tank Trailer (1939)			
		58.	Chev. ½ Ton Trk. (1939)				
		59.	Chev. ¾ Ton Tank Truck (1938)				
		60.	Chev. 1½ T. 425 Gal. Tank Trk. (1937)				
		61.	Chev. ½ Ton 600 Gal. Tank (1940)				
		62.	Ford 1½ T. Truck 690 Gal. Tank (1940)				
		63.	Chev. 1½ Ton 600 Gal. Tank Trk. (1939)				
		64.	G.M.C. ½ T. Truck 400 Gal. Tank (1939)				
		65.	Chev. 1½ Ton 600 Gal. Tank Trk. (1937)				
		Indorsement No. 7—G.M.C. Stake Body Truck 500 Gal. Tank (1941)					
		Ind. # 8—Ford 1½ T. Truck (1934)					
		Ind. #20—Internat'l 1½ T. Trk—Chassis #4865 (1941)					
Total 8		31		21		16	

Recap—Totals:

Passenger Cars	8
Light Trucks	31
Heavy Trucks	21
Trailers & Semi-Trailers	16
Total Units	76

HENRY D. MOYLE

called as a witness by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: Henry D. Moyle.

Trial Examiner Riemer: Where do you reside?

The Witness: Salt Lake City.

Direct Examination

Q. (Mr. Merrill): Are you in any way connected with the Idaho Refining Company? [1440]

A. I am.

Q. In what capacity? A. Vice-president.

Q. How long have you been so connected?

A. Since the company was incorporated.

Q. Do you have any other business?

A. Yes, I am a practicing attorney.

Q. How long have you been practicing law?

A. Approximately 30 years.

Q. Where do you maintain your law office?

A. Salt Lake City.

Q. You are a graduate of some university?

A. Yes, the University of Chicago.

Q. What degree did you receive from the University of Chicago?

A. Doctor of Jurisprudence.

Q. What other universities have you attended?

A. Harvard University, and the University of Utah.

(Testimony of Henry D. Moyle.)

Q. I believe that you have been a teacher at the University of Utah Law School for a number of years? A. 25 years.

Q. You are admitted to practice in the State of Utah? A. I am.

Q. Are you admitted to practice in the 10th Circuit Court of Appeals? A. Yes. [1441]

Q. And the Supreme Court of the United States?

A. Yes, I am.

Q. I believe, Mr. Moyle, that you became interested in the Idaho Refining Company at its very beginning, did you not? A. Yes, I did.

Q. And assisted in its corporate organization?

A. That's right.

Q. And in the original contracts for the construction of the plant, is that a fact?

A. Yes, I participated in the drafting of the contracts.

Q. Now, during the period of time that you have been connected with the Idaho Refining Company, have you maintained the position of vice-president during all of that period of time?

A. Continuously.

Q. And as vice-president and general counsel, what duties have you had to perform, Mr. Moyle?

A. Well, generally speaking, I have performed all of the legal service for the company that the company has requested and have consulted with and advised with the president and the manager of the company pertaining to company policies, particularly supervised substantially all of the contracts that

(Testimony of Henry D. Moyle.)

the company has entered into, and have taken charge of and handled, generally speaking, their legal problems including traffic. [1442]

Q. (Mr. Merrill, continuing): The Company was incorporated, was it not, under the laws of the state of Nevada? A. Yes, sir.

Q. And qualified to do business in the state of Idaho as a foreign corporation?

A. That's right.

Q. During the period of time that the company has been in existence, have you been familiar with its problems, particularly with reference to its employees?

A. No, I have had little or nothing to do with the employees of the company or their problems.

Q. Have you had brought to your attention anything touching the attitude of the corporation towards labor unions?

A. Well, I have known what the attitude was generally.

Q. What has that attitude been?

A. One of absolute impartiality. We have had no interest in [1444] anything other than having employees of the company do as they pleased.

Q. Is that the attitude of the company?

A. It is.

Q. State whether or not the company has ever interfered with the employees' absolute freedom in this respect? A. It has not.

Q. What is the fact as to whether or not the corporation or any of its officers or supervisory

(Testimony of Henry D. Moyle.)

employees, so far as you know, have ever influenced or attempted to influence the Idaho Refining Company Employees Benefit & Labor Association?

A. No to my knowledge.

Q. Did any officer have any authority from the corporation to do such? A. He did not.

Q. Mr. Moyle, I wish that you would explain the relationship between the Idaho Refining Company and the Western Gateway Company and the manner and method in which the business between the two companies is transacted. [1445]

A. Well, it is purely one of financing, and in order to obtain financial assistance based upon the warehousing of both refined and unrefined products, in the refinery, we entered into a lease agreement with the Gateway Company, following the same arrangement with the Lawrence Warehousing Company, and in that arrangement, in order to effectuate the bonds which the Gateway is required to carry in favor of the banks who loan against their warehouse receipts, they have to have these employees listed as their [1446] employees and pay them. The bill, however, for the wages that are paid, is sent to the Idaho Refining Company, and they pay them and the employees are to all intents and purposes, so far as their work is concerned; they continued after the arrangement as employees of the Idaho Refining Company the same as they did before the Gateway agreement was made.

The Idaho Refining Company could, of course, discharge or hire new employees to take the place

(Testimony of Henry D. Moyle.)

of the ones who were on the aGteway payroll, subject only to there being no personal objection by the Gateway people. In other words, if we undertook to hire somebody who couldn't get a bond, the Gateway would have had to object, but, so long as we have hired anybody who could qualify on a bond, the Gateway were not interested in whom we hired or whom we fired. And as I indicated in my first statement, I would say that certainly more than nine-tenths of their time is spent in performing services as employees of the refining company, rather than for the Gateway.

Q. Now, Mr. Moyle, is there anything further with reference to the arrangements between the Gateway and the Idaho Refining Company?

A. Except to say this, that in the conduct of our business, we make no differentiation between employees who have not been designated as Gateway employees and those who have.

Q. I wish that you would at this point explain the arrangement between the Idaho Refining Company and R. E. Stiff. [1447]

A. Well, when we entered into the agreement with the Shell Oil Company, the negotiations extended through April and May of 1941, and it became necessary to get some additional truck equipment. The Refinery was unable to finance it in the regular channels purchasing outright, and we therefore entered into a contract with R. E. Stiff of Baker, Oregon, by which we purchased his equipment for a stipulated amount of the capital stock

(Testimony of Henry D. Moyle.)

of the Refinery, and we gave to Mr. Stiff an agreement to purchase the trucks back at any time by the return of that stock under certain conditions, and for a certain length of time. As I recall, it was six months. It may have been a year.

As a matter of fact, the Shell contract says a year. Whether Stiff's was six months or a year, I don't now remember, but in any event, during that period, in which he had the right to buy back his trucks, we agreed that he should hire and fire his own drivers.

He stated that he was particularly anxious to keep the drivers that he then had working on the equipment which he had, and that he would not enter into this agreement unless—so long as he had the right to repurchase the equipment—he could hire and fire his own drivers.

Mr. Penfield: Was the date of that contract established?

Q. (Mr. Merrill, continuing): Substantially when was that contract entered into?

A. My recollection is during the month of May, 1941. [1448]

Q. How are the drivers referred to as those on the river or on the West End, the ones to which you make reference in dealing with Stiff?

A. Yes. This Stiff equipment was purchased to make a haul from the river, hauling gas which we received from the Shell Company there in exchange, and that was hauled into the Boise territory

(Testimony of Henry D. Moyle.)

in return for gasoline which we were furnishing the Shell Company out of the refinery here.

Q. The river that you refer to is the Columbia River?

A. Yes, sir; Attalia, Washington on the Columbia River. Attalia, Washington was the marine terminal from which we hauled.

Q. Now, other than that which you have stated, Stiff had no relationship whatever with the company, is that right? A. That is right.

Q. Or with the Idaho Gas & Oil Company?

A. That is right.

Q. And I understand that he had no arrangement or connection whatever with the Covey Gas & Oil? A. He did not.

Q. Mr. Moyle, I hand you Board's Exhibit 7 which names the officers of the Idaho Gas & Oil Company. Are you able to advise approximately when those individuals became officers as recited on that exhibit?

A. Well, the first group——

Q. And their tenure of office? [1449]

A. The original officers are just what they indicate. They were the officers at the time of the organization of the company.

Q. (Trial Examiner Riemer): When was that?

A. Sometime in 1939, I should say the first half of the year. Mr. Henderson continued as president of that company until he left to hold some public office.

Q. Probate judge?

(Testimony of Henry D. Moyle.)

A. Probate judge? When was that?

Q. That was approximately two years ago?

A. Yes, I would say he held that office until two years ago when he filled some public office here.

At that time, Mr. Peterson became the president, and Arch Webb took Mr. Peterson's place as secretary and treasurer. Those same officers continued until Mr. Webb left for the Army. That is just two years ago now I think he testified.

Trial Examiner Riemer: He went into the army in December, 1940.

The Witness: Yes,—well, whenever it was—December, 1940. When Mr. Webb left the Idaho Refining Company, Mr. Frank Copenig became the Secretary-Treasurer and those officers continued until the spring of 1942, when Mr. Albertson became president, and those officers continued until July, when Mr. Copenig went into the army and William McMillan became the secretary-treasurer in July, 1942.

Q. Mr. Moyle, I wish you would relate a little more in detail [1450] the relationship to the Idaho Refining Company of the Idaho Gas & Oil Company. I understand that the Idaho Refining Company does not own any of the stock of the Idaho Gas & Oil Company. Is that correct?

A. That's right.

Q. Explain that relationship, then, between them.

A. The incorporators of the Idaho Gas & Oil Company for the most part, were stockholders of the Idaho Refining Company, and they invested

(Testimony of Henry D. Moyle.)

in that company some eighteen or nineteen thousand dollars in capital, and since its organization, the Refining Company has loaned that corporation upwards of \$295,000, and the Company has built up—the Idaho Gas & Oil Company has built up the principal company controlled retail outlets for the Refinery in the territory from Twin Falls west.

Q. Then do I understand that because of the relationship of debtor and creditor, the Idaho Refining Company has rather close control of the Idaho Gas & Oil Company?

A. Yes, and I might say this situation is true with some other companies—that is, other distributors who distribute the Refinery products.

Q. Now, Mr. Moyle, did you come to Pocatello and engage in a meeting or hold a meeting with the employees of the Idaho Refining Company in the spring of 1939? A. I did.

Q. Will you relate that incident and advise what was said at the [1451] meeting and by whom?

A. Well, I was urged by the company, especially Mr. M. B. Kaye who was the general manager of the refinery, to look into the question of obtaining financial assistance for the refinery employees obtaining living quarters in Pocatello. There seemed to be some difficulty here from lack of housing and lack of transportation from the city to the plant. It was his idea that if it were possible, some housing should be furnished near the plant.

We were experiencing a great deal of difficulty in getting the plant to function economically, and

(Testimony of Henry D. Moyle.)

were having various complications and difficulties with the plant which required the employees to come in frequently to the plant when the shifts would require them.

I looked into the subject pretty carefully and came up here and held a meeting which has been referred to here frequently, on the rear steps of the finery and gave to the employees of the refinery my findings with reference to the various possibilities of financing homes.

Q. Reference has been made to the FHA program. A. That was one of them.

Q. What was said with reference to that, if you remember?

A. Well, you mean the details of the program?

Q. Just generally.

A. I indicated to them that it was quite possible through FHA [1452] to get assistance financially if they had the proper building sites located.

Q. Mr. Moyle, state whether or not that meeting had anything to do with the Idaho Refining Company Employees Benefit & Labor Association, or the members thereof?

A. None whatsoever. I knew nothing about such an association at that time.

Q. And state whether or not any discussion was had touching any membership of that Association, or the members thereof?

A. There was not.

Q. Was there any reference made to such?

A. No, sir.

(Testimony of Henry D. Moyle.)

Q. Now, Mr. Moyle, some testimony has been introduced touching discounts for gasoline and oil to certain persons. Will you state what has been the policy of the Idaho Refining Company with reference to that matter?

A. Well, I announced to the employees of the Refinery that it would be the company policy to give to any employee his gasoline at substantially our cost plus enough merely to handle the situation, credits and so on.

Q. Did you advise them as to the manner in which that gasoline was to be discounted, or by whom?

A. Well, I told them at that time that the details would be worked out and the management would designate some station in Pocatello handiest to the refinery from which they could buy [1453] that gasoline.

Q. State whether or not that policy has been followed by the company since that time?

A. I have been so advised, yes.

Q. State whether or not that discount——

A. That discount, of course, went,—it was not confined at that time, or any other time, as far as I know, to gasoline. It came up at the time that we discussed the building of these homes in connection with the suggestion that so far as the purchasing of building materials, cement, sand and gravel, and things of that kind, that they might get, in addition to automobile accessories, that we would endeavor to give the employees the benefit of any re-

(Testimony of Henry D. Moyle.)

duction that we could get as a refinery with our refinery purchasing power.

Q. State whether or not that privilege was extended to all of the employees, irrespective of membership in the Association or confined to any group?

A. It was extended to all of the employees of the Refinery, regardless of any affiliation they might have with anybody.

Q. Has that been the continued policy?

A. I have been so advised. The management was then instructed to do so.

Q. Mr. Moyle, I am directing your attention to the item of insurance. Will you explain the policy of the company with reference to insurance and its experiences, in so far as [1454] the same cover motive power equipment of the company?

A. Well, I had nothing to do with the insurance—that is, the original writing of the insurance. I knew who our insurance carriers were so far as the agents were concerned. I knew that from the daily reports I got from the refinery, we were having accidents, and Mr. Sheets advised me from time to time that the situation was growing more and more serious.

Q. Which Mr. Sheets was that?

A. Mr. Gilbert S. Sheets, the president of the company.

Q. Growing more serious in what way, Mr. Moyle?

A. Both as to frequency and what they call

(Testimony of Henry D. Moyle.)

the loss ratio—the losses against the amount of the premium.

Q. How frequently was this advice given you, say in the year 1941, prior to November 14th?

A. I think that the only accidents that were ever reported to me, were what you would call the more serious or major accidents.

Q. Yes, what complaint if any was made to you, and by whom, touching accidents and a possible cancellation of the policy?

A. Well, Mr. Sheets very frequently discussed with me in Salt Lake, the possibility of a cancellation, and also the very great difficulty we would have if our policy were cancelled.

Q. In what respect, Mr. Moyle, would that difficulty arise?

A. Well, I recall especially Mr. Sheets telling me on more than one occasion that the fact that the companies with which he was associated and who had written our insurance, if they cancelled, [1455] the companies who had no such interest in our refinery would be less likely to take up the insurance when once cancelled.

Q. When did this matter of the cancellation of the insurance come finally to your attention for action, if it did?

A. Well, the early part of November, 1941, I attended the American Petroleum Institute in San Francisco. As I recall, I was there ten days. Whether I was notified while I was in San Francisco of its cancellation or not, I don't remember,

(Testimony of Henry D. Moyle.)

but I returned to Salt Lake City on the 11th and had a three-hour conference with Mr. Sheets on this matter on the 12th of November, 1941.

Q. And what was the subject matter of the conversation? Relate it in some detail.

A. The question of what we would have to do to get new insurance and from my end of it, we would not be able to operate past the 17th unless we had insurance. We discussed in that connection the financial condition of the company.

Q. What else did you discuss? Did you discuss the reasons for the cancellation?

A. Well, I don't think that we wasted much time discussing the reasons, and I was definitely informed by Mr. Sheets that the reason was our loss record—our accident record.

Q. Did you and Mr. Sheets come to any conclusion at that time, that is, on the 12th day of November, 1941, as to any action that you would take in this matter? [1456]

A. We came to the conclusion that without the discharge of our drivers, we would not be able to get anybody to consider the re-writing of our insurance.

Q. Was there any conclusion reached at that time touching the discharge of these drivers?

A. Yes, we decided at that time that we would either have to do that, or quit business.

Q. What drivers were particularly involved in that decision?

(Testimony of Henry D. Moyle.)

A. Well, the drivers that were regularly hired by the Idaho Refining Company out at the refinery that had charge of our equipment, that had had these major accidents. In fact they were the only ones that we did consider.

Q. Was there any consideration of the distinction between drivers who had had major accidents and drivers who had not had major accidents?

A. No, as far as I was concerned, there had never been anything reported to me as objectionable to the insurance company except the larger or major wrecks, which our larger equipment had had. In fact, I had no record at all of any other accidents.

Q. Now, what did you and Mr. Sheets do, if anything, with respect to coming to a decision on this matter?

A. Well, after a conclusion of our conference, and after he reported to me what he knew, and I reported to him my judgment, we decided as I indicated that the only thing we could do would be to discharge these drivers. [1457]

Q. At that time, did you know whether or not these drivers or any of them, were members of any outside labor organization or particularly Teamsters Local 440? A. I did not.

Q. Did you know whether or not they were, or any of them were, members of any union?

A. Well, I just assumed, from the agreement of June, 1941, that they were members of the Benefit Association inside the refinery.

(Testimony of Henry D. Moyle.)

Q. Did you ever have information of any kind or character touching union activities of any of these men? A. I did not.

Q. State whether or not the union activities of any of these men had anything whatever to do with the decision which you and Mr. Sheets made for the discharge of these drivers?

A. I should say definitely not.

Q. Did you know a man by the name of Archibald?

A. Well, so far as I can recollect, I have been thinking of him all through this trial—I don't think I ever heard his name before he came here to the trial of this case or before I read the complaint in this case.

Q. Did you know anything of his discharge?

A. I did not.

Q. Or anything of his relationship or association in any union or any union activities? [1458]

A. I knew nothing whatever about it.

Q. I believe that you said that you made efforts to get insurance. What efforts were made, Mr. Moyle, I mean in so far as the cancellation of the Firemen's and Metropolitan policies—

A. Well, I was informed when I returned on the 12th that every possible agency had been contacted and that the matter was under consideration with them. That up to that time, we had had no favorable reply of any kind, and that unless there was something done by the company to change the situation, we likely would not have any.

(Testimony of Henry D. Moyle.)

Q. Why did you think that the discharge of the drivers would make it easier for the company to get new insurance?

A. Well, I understood that nothing short of a complete change—definite change—in our set-up would be sufficient to put us in a position where any of the companies would consider us.

Q. State whether or not that was the reason for your decision?

A. Well, Mr. Sheets and I went over the whole situation. We couldn't change the equipment. We couldn't change the job to be done. We came to the conclusion that there was only one thing that could be changed, and that was the drivers.

Q. Is there anything further in connection with that meeting with Mr. Sheets in Salt Lake City on the 12th of November, 1941?

A. Well, Mr. Sheets and I agreed that I should come to Pocatello the next day, explain the situation to Mr. Moyle, and have him carry it out. [1459]

Q. What did you do then?

A. Well, that is just what I did. I came here on the 13th of November, 1941.

Q. About what time of the day did you reach Pocatello, do you remember?

A. Well, my recollection is that I came—got in here sometime around noon. I could be mistaken about that, and as far as my recollection now goes, I was only in the refinery for a short while the afternoon of November 13.

(Testimony of Henry D. Moyle.)

It was represented to me that the companies had not yet approved of issuing any policy to us, but Mr. Watkins advised me that he thought his company during the afternoon would give me a binder pending their determination whether they would write the policy or not, and that afternoon Mr. Watkins brought me in a ten-day binder, dated back as I recall it, to noon of the 17th.

There was some discussion as to whether the original cancellation notice took place at midnight, the beginning of the 17th or high noon. But, as I recall it, Mr. Watkins' binder was dated from high noon of the 17th.

Q. Then what further was done with reference to securing insurance?

A. Well, before the ten-day period had expired, Mr. Watkins had given us rather definite assurance that the policy would issue, and he issued us a second binder, then later, the policy. [1462]

Q. Are you able to state whether or not the policy was ultimately issued because of the discharge of these drivers, or would it have issued if they had not been discharged?

Mr. Penfield: I object to that. I don't see how he knows.

Mr. Merrill: He knows what they told him.

Mr. Penfield: Well, get the insurance representative in that case.

Trial Examiner Riemer: If you know, you can answer the question.

A. Well, that's what they told me.

(Testimony of Henry D. Moyle.)

Q. (Mr. Merrill, continuing): Repeat what they told you.

A. They told me that they wouldn't consider writing it until after we had discharged them and were in a position to ask us to discharge them.

Q. (Mr. Penfield, continuing): Who told you that?

A. My recollection,—both Watkins and Mr. Sweeney.

Q. (Mr. Merrill, continuing): When did they tell you that?

A. Mr. Sweeney in my office, and Mr. Watkins either over the phone or in my office. I had one conversation with him over the phone from Idaho Falls and I think one from my office. I think that he came to Salt Lake.

Q. Is that Mr. Sweeney? A. Yes.

Q. Who was Mr. Sweeney?

A. He is an insurance agent in Idaho Falls.

[1463]

Q. When did Mr. Watkins tell you that he wouldn't write the insurance unless those drivers had been discharged?

A. Well, that was at the meeting on the 17th. That is, he gave me to understand that. I understood that it was a delicate situation with the insurance companies, they would not be put in a position whether they either recommended, or urged or requested the discharge of the drivers. That was made clear to me, but that after we had discharged them on our own initiative, the fact is

(Testimony of Henry D. Moyle.)

tions under the Interstate Commerce Commission covering insurance on motor vehicles of the type and character and for the purpose used by the Idaho Refining Company? A. I have.

Q. And what were the requirements at the time that you came to this decision in November, 1941, with respect to insurance?

A. Well, our company would either have to have the insurance required by the insurance regulations of the Interstate Commerce Commission, or have qualified as a self-insurer before we could have engaged in operating on the highways in interstate commerce.

Q. Was the Idaho Refining Company able to comply as a self-insurer under the rules and regulations of the Interstate Commerce Commission?

A. We were not.

Q. Why?

A. Because of our lack of capital.

Mr. Penfield: I don't think that it is material. [1466]

Trial Examiner Riemer: That's enough.

A. (Continuing): As shown by an exhibit heretofore introduced. What was the number

Mr. Penfield: I object to that, and object to any further——

Trial Examiner Riemer: That was Respondent's 6.

A. Respondent's Exhibit 6.

Q. (Mr. Merrill, continuing): Now, Mr. Moyle, when did you next come up to Pocatello from Salt

(Testimony of Henry D. Moyle.)

Lake City after you first were here on the 13th of November, 1941?

A. The 21st of November.

Q. At that time, did you have a meeting with anyone in the refining plant? A. Yes.

Q. What was the purpose of your visit on that day?

A. I understood that a Mr. Brandt and a Mr. Rosqvist wanted a meeting at the Refinery with reference to an agreement that they had left with the Refinery the week before.

Q. Did you know those gentlemen at that time?

A. As far as I remember, I had never met either one of them before.

Q. What time did this meeting convene on the 21st of November, 1941?

A. As near as I remember, it was in the morning.

Q. Where was it held?

A. In the Refinery office. [1467]

Q. Who was present?

A. Those two gentlemen, and Mr. John Evans, Gilbert Moyle, and myself, and Frank Copening.

Q. Will you relate exactly what was said and done at that meeting, Mr. Moyle?

A. These men asked if we were ready to sign the contract——

Trial Examiner Riemer: In describing this conversation, tell us who spoke, giving the names of the individuals, if you can.

(Testimony of Henry D. Moyle.)

A. (Continuing): As to the two labor men, I could be mistaken. It is my recollection that Mr. Rosqvist led off in the first part of the conversation and asked whether or not we were ready to sign this contract, and I told him that as far as I was concerned, unless I had some proof or evidence of his right to bargain for the employees of the refinery, that an agreement which we already had with the employees would seem to prevent me from so doing.

Q. And what did he say?

A. In other words, I told him that I didn't see how we could have two representatives at the same time.

Q. What did he say in response to that?

A. Well, he said in substance, "What kind of proof do you want."

Q. What did you say?

A. I said it was my first experience, that I didn't have the wildest idea what kind of proof he had. I said I would be [1468] glad to consider any proof, or any evidence.

Q. And then what did he say?

A. Well, he said that it wasn't—I think that he made some statement that it wasn't customary to produce proof, or wasn't customary to produce any evidence, or something, and I told him that I didn't see how I could deal with him unless I knew whom he was representing. I asked him, I think, specifically the question, "Whom do you represent?"

Q. And what did he say?

(Testimony of Henry D. Moyle.)

A. And he said substantially that the names of the men were a secret which he could not divulge. I don't know whether he said according to the rules of his organization, or not, but that was the impression I got from what he said, there was some rule or regulation that would not permit him to divulge the names of the people that he represented.

Q. Then what was said, further?

A. Well, I told him that I was sorry, but until I could be informed as to whom he represented, it would be difficult, if not impossible, to bargain with him.

Q. What further was said?

A. Well, we had some discussion—some further discussion as to—I think he asked me more or less categorically if I refused to bargain with him, and I said “No”, that I had come up there purposely to bargain with him if I knew what he was bargaining for, or what authority he had to bargain for them. [1469] And I recall that something was said about “Don't you know Mr. Evans, one of your drivers”, and I think that I told him that I didn't know him personally, but very likely he was a driver, that I didn't dispute that fact at all.

Q. What further was said, if anything, Mr. Moyle, and by whom?

A. Well, we discussed some further the agreement that we had with the Association, and Mr. Brandt suggested that maybe if that was the case—that is, that we had this agreement,—an election

(Testimony of Henry D. Moyle.)

ought to be called for the purpose of determining who represented—properly represented the employees of the refinery, and I told him that he could hold an election any time or any place that he would like to, we had no objection.

Q. What reply did he make to that, if any?

A. Well, I don't think that there was ever anything further said on the subject of election that I recall.

Q. Was there anything further said at that meeting that you now recall?

A. Oh, about that time, these men stood up and we greeted each other and they departed.

Q. Did anyone besides yourself on behalf of the Idaho Refining Company make any statement or comment, or ask any questions?

A. Well, not unless Frank Copening or Gilbert **Moyle** may have made to me when I said that I didn't know John Evans, that he was a truckdriver or something to that effect.

Q. Other than that, was there any statement made by any one of [1470] them?

A. I think not.

Q. Mr. Moyle, did you ever refuse to negotiate with this organized group, or any organized group if they were properly represented?

A. Well, I never refused to bargain with them at all.

Q. What is the fact as to whether or not you are open for bargaining at any time?

(Testimony of Henry D. Moyle.)

A. I told them that that was the fact.

Q. And was it the fact?

A. It is the fact, and it was then.

Q. Did they ever present to you any proof of their right to represent any group of employees working for the refining company, or otherwise?

A. Would you read the question?

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. I think that is the only time I ever met those men or saw them.

Q. Did either of them ever take this matter up with you in Salt Lake City?

A. They did not.

Q. Did either of them ever call on you again?

A. They did not.

Q. Do you recall now whether you have related all that occurred [1471] at that conversation?

A. Well, I think substantially all; I don't recall anything else specifically.

Q. And has anything happened with respect to that matter since that date, so far as it has been brought to your attention?

A. Well, nothing except the investigation and institution of this suit. [1472]

Q. (Mr. Penfield, continuing): Your first knowledge of the actual cancellation of the insurance came from Mr. Sheets, did I understand you to say?

A. That is my present recollection, yes.

(Testimony of Henry D. Moyle.)

Q. And that is when you returned from the Coast

A. That is right.

Q. That was on November 12?

A. I may have known something about it. I mean, regardless of where I am, I get telephone calls all the time, and that information may have passed by telephone while I was in San Francisco, but I don't have no recollection of it now.

Q. You met with Mr. Sheets on November 12 to discuss the matter and you decided that further action should be taken by the company, is that correct?

A. That is right.

Q. And as I understand it, during this conference, neither of you knew anything except that the insurance had been cancelled because of the loss ratio. You didn't know anything about the individual driving records of any of the drivers, is that correct?

A. Your question has two questions in it. Which one do you want me to answer?

Q. Well, if you can, figure them both out. [1475]

Mr. Merrill: I object to the question.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing): At the time that you met with Mr. Sheets, did you know anything of the accident records of the drivers?

A. Yes.

Q. The individual accident records?

A. I knew nothing about them individually by name.

(Testimony of Henry D. Moyle.)

Q. Then all you knew was the loss ratio, is that correct? A. No, that is not.

Q. What did you mean, then, when you say that you knew something about the accident record?

A. Well, as I indicated, I get a record of every major accident, and I get a daily report from the refinery on the business of the refinery. I knew from day to day and week to week and month to month what was transpiring up here, and I make frequent visits to Pocatello.

Q. The only reports you had, though, were of accidents that had occurred. You knew nothing of the accident records of the other men?

A. Yes, I knew in each instance which driver had the accident when I got the report, but you were asking me about the day I talked with Mr. Sheets.

Q. Yes, I am asking you that.

A. The day Sheets and I talked, we didn't have the individual [1476] record of any driver before us.

Q. I believe that several of the insurance men have testified, and I believe that Mr. Sheets also testified, that it is not only the major accidents but the fact that there are a number of smaller accidents that is influential in the determination of an insurance company to continue with a risk.

A. I didn't so understand.

Q. Didn't he discuss that with you at this meeting on the 12th? A. He did not. [1477]

Q. When you came to Pocatello on November

(Testimony of Henry D. Moyle.)

13, and you ordered Mr. Gilbert Moyle to discharge the drivers, why did you order the drivers who were out called in from their trips and that they be paid up on November 14, the next morning?

A. I didn't so order.

Q. Wasn't that matter discussed, when the drivers would be paid off?

A. I told him to discharge them just as quickly as they could, that it would be impossible for us to have any negotiations with insurance companies until after they were discharged, and that we [1478] had only two or three days left.

Q. (Trial Examiner Riemer): Well, you had been negotiating before you came to Pocatello, hadn't you, Mr. Moyle?

A. I had not, no, sir.

Q. Well, I mean the officers of the company had?

A. They had gotten no insurance.

Q. (Mr. Penfield, continuing): Actually you had insurance and would have had it up to the 17th?

A. Yes, but we had to have new insurance by the 17th. That just gave us three days after the discharge of the drivers in which to make that representation and get the insurance.

If we hadn't discharged the drivers until the 17th, we would have then been several days without insurance pending the negotiation of it. There was no policy negotiated on the 14th.

Q. As a matter of fact, the agents for the Commercial Standard Insurance Company were not ap-

(Testimony of Henry D. Moyle.)

proached until after the drivers had been discharged?

A. I don't know what you mean by approached.

Q. Well, that is their testimony here; do you think that was incorrect?

A. I don't know; I didn't approach them before. The first conference I had with Mr. Watkins was on the 17th.

Q. Watkins said that he was first approached on the 15th of November.

A. I say I don't recall anything about it. [1479]

Q. Well, how did you happen to conclude that it was necessary to discharge the drivers in order to get new insurance, if you didn't discuss the matter with any of the insurance companies until after the drivers were discharged?

A. You are talking about me, personally? I had a three-hour conference with Gilbert Sheets, who is an experienced insurance man, and I personally have been an attorney for more than 20 insurance companies at a time over a period of many, many years, and I think that both Mr. Sheets and I knew something about the insurance business, and we met in my office on the 12th, and he brought in everything that he had been able to get since the notice of cancellation was given him on the 8th and we came to a conclusion there, according to our best judgment, that unless we did that, we wouldn't get any insurance.

Q. Did you consider the question of retaining the drivers who had not had accidents?

(Testimony of Henry D. Moyle.)

A. We considered every phase of it that we could conceive of.

Q. Did you consider that phase?

A. Yes, that was one of them.

Q. Why did you conclude that that would not be an effective means?

A. We concluded that there was nothing short of a complete housecleaning would induce any company to issue the insurance with the record that we had of accidents, and furthermore, we considered the element of time for any company to come up here [1480] and go into the records of the various drivers and differentiate one from the other, it would take more time than we had.

Q. You had records——

A. I didn't at that time, and neither did Mr. Sheets.

Q. They certainly were available very readily.

A. That may be your opinion. That wasn't mine.

Q. When you came to Pocatello and had this meeting with Mr. Moyle, in which you told him to discharge the drivers, did you discuss the matter of obtaining new drivers?

A. No, that was a matter that I left entirely to them. I had nothing to do with hiring and firing drivers. I discussed the difficulty that they would have in getting new drivers with them.

Q. Did you discuss the problem of the qualifications of the new drivers?

(Testimony of Henry D. Moyle.)

A. I didn't personally go into any question of the qualifications other than to state to them that it would be necessary for them to use the greatest degree of care and caution in hiring any new drivers, and they were not to hire them any faster than they could get competent drivers, even if we had to buy gasoline from other outfits to fill in.

Q. Did you suggest any tests to be used in securing competent drivers?

A. Several safety tests are accorded. I, of course, am not an expert.

Q. Did you suggest any sort of a test? [1481]

A. My instructions were that they were to use the greatest care and caution, and not to put anybody on the equipment that was not fully competent to handle it. They were not to hire new men any faster than they could get competent men.

[1482]

Redirect Examination

Q. (Mr. Merrill): Mr. Moyle, was there anything said at that time by Mr. Brandt or anyone else that you remember wherein the figure 52 per cent of the employees was used?

A. Well, I have some recollection of it. It is not entirely clear in my mind. Some such a statement, it seems to me, was made near the beginning of our conference and it gave me the impression that they were there for the purpose of bargaining for all of the employees.

Q. Was there anything said touching an election then of all the employees?

(Testimony of Henry D. Moyle.)

A. Well, as I understood, Mr. Brandt's suggestion was that an election be held with the employees to determine whether—or who was their bargaining representative.

Q. At the conclusion of the meeting, what was your understanding as to whether or not it was closed or that further negotiations were in order, or would be followed up?

A. Well, frankly I expected to either have a further conference in which they would present some evidence of whom they represented—that is, which of our employees they represented—or I frankly expected they would come in and ask for an election. [1490]

Q. Were you prepared to meet with them about either one of those matters? A. Yes, indeed.

Q. What is the fact as to whether or not that was the understanding you had when the meeting closed?

A. Well, I wouldn't say understanding, because there wasn't anything—they didn't say they would come back or they would do anything, but that was the impression I was left with as the result of the conclusion of our conference. [1491]

Q. (Mr. Merrill): At the time you and Mr. Sheets discussed the matter of the cancellation of insurance on the 12 day of November, 1941, did you have in that conversation a discussion with any agents concerning the possibilities of getting additional or other insurance? A. No.

Q. I see.

(Testimony of Henry D. Moyle.)

A. We simply discussed the information we had then at hand.

Q. Mr. Sheets, I understood, however was and had been for many years last past in the insurance business; is that a fact? A. That is correct.

Q. And you yourself had had considerable experience as counsel for insurance companies covering matters similar to this one?

A. Well, I would say touching all matters on all kinds of insurance.

Q. And it was only the fact as to whether or not the discharge of the drivers appeared to be absolutely necessary in order to secure additional or other insurance?

A. That was the best judgment of Mr. Sheets and myself. [1493]

Q. Then following that, state whether or not that judgment was in any wise confirmed by discussions with insurance agents from whom insurance was sought or secured.

Mr. Leicht: That I object to again on the grounds it has been answered several times.

Trial Examiner Riemer: We will hear it once more. Overruled.

A. Well, to the extent that they first seriously entertained our application for insurance after we had discharged the drivers and made that representation to them. I think it is only fair to say that it was a very delicate matter for the insurance company, to directly or indirectly request the discharge of these drivers. That has to be the com-

(Testimony of Henry D. Moyle.)

pany's responsibility and they have to do it of their own volition. [1494]

Q. (Mr. Merrill): Now Mr. Moyle, some reference has been made to a 60-hour week as driving time under the Interstate Commerce Commission regulations. Do you know the rule of the Interstate Commerce Commission that required that or provides for it? A. Yes.

Q. What section of the rule is that?

A. That is under the heading, "Private Carriers of Property" under regulations effective October 15, 1940 as published in the Motor Carriers Safety Regulations Revised including orders issued through November 4, 1940, Part Five and Rule Three, cover the hours of labor of page 93 of these regulations. [1495]

Q. What else does it provide?

A. It provides for a 60-hour week providing the carrier is operating on every day of the week—or not more than 70 hours in any period of 192 consecutive hours—I think that is the substance of it. [1496]

Q. Mr. Moyle, had you on November 12 been told by anyone other than Mr. Sheets that nothing but a definite change would succeed in getting a new policy for the company, [1498] and by nothing short of a definite change and discharge of the truck-drivers?

A. Well, the matter had been under discussion off and on whenever these serious accidents occurred and I think it is fair to say more frequently in the

(Testimony of Henry D. Moyle.)

fall of 1941 than ever before, that if these accidents were continued, our policy would be canceled and that if it were canceled, we would have very great difficulty in getting a policy and certainly we wouldn't get one without making a drastic change in our set-up.

Q. Did you at all investigate the problem of whether by paying an increased premium you could continue the employment of truckdrivers?

A. Well, I think on various occasions——

Q. No, I mean on November 12.

A. As far as I know the question of the amount of the premium was not discussed. In other words, we were concerned only with getting insurance.

Q. I was wondering if in your discussion with Mr. Sheets there arose a possibility of the paying of an increased premium and thereby retaining the older policy rather than getting a new one?

A. That matter had been discussed before, but I am certain it was not on the 12th.

Q. Mr. Moyle, some testimony has appeared on behalf of [1499] the respondent that you and Mr. Sheets are the ones who formulated the decision to discharge, and I want to ask you some questions along that line. First tell me, are the individuals that are named in the Board's complaint except Leo Archibald the only truckdrivers that were discharged as the result of the cancellation of the insurance policy?

A. All I know about it is what I heard in this

(Testimony of Henry D. Moyle.)

case. I never received the names of men who were discharged.

Q. Well, I will put it this way, were any other truckdrivers, transport truckdrivers, employed by the Idaho Refining Company operating out of Boise or Baker or any other place in Idaho or in this area discharged at that time?

A. As far as I know not.

Q. Do you know if any truckdrivers employed in Pocatello, Boise, Baker, or any other city within the confines of the company's business, whether any of those truckdrivers were retained?

A. Well, all I know is what I have heard in this case, and I assumed, of course, there were no others discharged other than those working out of the refinery. In other words, I had no idea anybody would be discharged in the west end of our operations under Mr. Stiff.

Q. Well, why?

A. Well, in the first place——

Q. Let me put it this way. Did this decision made by you and [1500] Mr. Sheets on November 12 contemplate only the discharge of the drivers of transports operating out of Pocatello?

A. I think that is right.

Q. Well, why that limitation?

A. Well, in the first place, as far as I was concerned I went on the assumption that we had *not* right to discharge Mr. Stiff's drivers. This occurred at a time when he had under a contract with us a right to take care of his own drivers, and in the

(Testimony of Henry D. Moyle.)

second place so far as his drivers were concerned, I didn't know of any accidents any of them had ever had. In the third place there was no discussion between Mr. Sheets and myself on my return from California concerning any differentiation. I mean, we did not discuss, "We will order the discharge of this driver and not this one." We were simply discussing our truckdrivers at the refinery, and I don't believe, to be very frank with you, that the drivers out of Baker under Mr. Stiff, because of those facts entered into our discussion.

Q. Wasn't Mr. Stiff nothing but more or less of a branch manager at the time involved here operating under your control?

A. No, the fact is he really had nothing to do with our business either before or after except to manage his trucks.

Q. Well, he was using your trucks.

A. Well, I say managing his trucks that he had over there, [1501] and had a right to repurchase.

Q. Do you know if there was any other truck-driver discharged at Baker other than Douglas?

A. Well, I didn't know of Douglas's discharge and did not know of any others.

Q. And of course, the question of his discharge is one of the issues?

A. That's right, and I know nothing about that. I am sure Mr. Sheets and I knew nothing about Douglas when we had the discussion on the 12th.

Q. Will you say, then, that your discussion on

(Testimony of Henry D. Moyle.)

the 12th at Salt Lake City was concerned only with the drivers working only out of Pocatello?

A. I think that is right.

Q. It is not clear in my mind, Mr. Moyle, why you should so confine your thinking and the decision in view of the fact the policy covered the truck-drivers and operators of at least one subsidiary company, and of at least one company whose debtor-creditor relation to the respondent is so close to bring it, in my opinion, within the definition of an employer in the Act, and in view of the fact that your policy covered all of those drivers plus the additional reason—this is quite involved—but plus the additional reason that the cancellation of the policy, this blanket policy, by the insurance company was based on a loss ratio [1502] that applied over the whole system, so to speak, and wasn't based on losses sustained only by the Pocatello drivers—that is not a question. That is a statement of doubt on my part.

A. You may have that doubt, but if you were in my position——

Q. I would like to hear from you on that.

A. If you were in my position you wouldn't have had any doubt, because over this entire period the only accidents Mr. Sheets had ever discussed with me or told me was *was* affecting or was a threat to the continuance of our policy were these accidents that the drivers of these transport trucks out at the refinery had.

(Testimony of Henry D. Moyle.)

Q. Out of Pocatello?

A. Out of Pocatello. Well, of course, on the Baker end, I don't think any of us ever considered that as anything but a temporary operation and peculiar because of the fact we had taken Mr. Stiff's trucks over on this arrangement, but so far as the Covey Gas & Oil Company and the Idaho Gas & Oil Company are concerned I don't now recall any incident where any accident to any of their trucks was even reported to us.

Q. Did the Idaho Gas & Oil Company truck its own gasoline?

A. Well, for the most part independent licensees were operators and had their own equipment. Sometimes it belonged [1503] to the refinery. But for the most part, I think it belonged to the operator, but that was all covered by our insurance.

Q. What about Covey?

A. Covey the same way. Although it was under our policy, these losses were not losses in every instance of the Idaho Refining Company, so that we gave no consideration to the Idaho Gas & Oil Company at Pocatello because they formed the distribution end of our business rather than the refining.

Mr. McKay: You said "Pocatello"—you meant Covey.

The Witness: I meant Covey.

Q. (Trial Examiner Riemer): You heard me question Gilbert Moyle yesterday concerning losses sustained by at least four or five transport drivers

(Testimony of Henry D. Moyle.)

involving collision and property losses in various accidents from about \$7 up to over \$600, I think. Do you know of your own knowledge whether any of those men who sustained those losses on which the cancellation of the policy was based were discharged?

A. Well, I heard Mr. Moyle say the \$600 loss——

Q. That was Patterson?

A. (Continuing): ——was a truck we didn't own.

Q. That seems to be Patterson in that accident on November 5, 1941, and there is some testimony he was discharged.

A. All I know is what we have heard here in this trial.

Q. I believe you testified on more than one occasion since you have been on the stand that you made no attempt to pick [1504] out your good drivers as distinguished from those who had bad records?

A. That matter was not discussed by Mr. Sheets and myself.

Q. Why didn't you discuss that?

A. Well, it just didn't seem to us to be in the picture at all. In other words, anything short of a complete change there would not have helped us get the insurance within the time that we had to.

Q. Do you know if your decision, that is the decision reached by you and Mr. Sheets on November 12, was ever communicated to Stiff at Baker?

(Testimony of Henry D. Moyle.)

A. Of course not, to my knowledge. I saw no reason for it.

Q. That is, Stiff wasn't instructed to discharge employees at Baker.

A. Well, let me put it this way. I didn't include, nor did Mr. Sheets, in our instruction to Gilbert Moyle, Mr. Stiff. In fact, I didn't refer to Mr. Stiff in my conversation with Gilbert.

Trial Examiner Riemer: I think that is all, thank you. Mr. Merrill?

Redirect Examination

Q. (Mr. Merrill): It has taken considerable time since this hearing in ascertaining the full extent of those accidents, has it not?

A. Yes, it has. I has been seemingly for some unknown [1505] reason rather difficult to get a complete list form the insurance companies. The records seem to be scattered in various places.

Mr. Merrill: I believe that is all.

Mr. Penfield: Nothing further.

Trial Examiner Riemer: You are excused.

(Witness excused)

Mr. Merrill: The respondent offers in evidence Respondent's Exhibit No. 10, which pursuant to conference heretofore had with counsel for the Board is a specimen copy of policy number FM 29227 with an attached classification of figures and property described in the schedule attached to the original policy, together with the items that have been changed by indorsement on the original policy.

The offer is made in this form and the policy has been much condensed in order to conserve time and space and to provide a clear understanding of the items covered. That on the face of the policy in answer to the provision "Amount Deductible", under "Collision Losses," There appears a statement "Per Schedule Attached." That the schedule attached to the original policy provides the amount deductible for each item insured and more particularly that all heavy trucks are subject to the amount of \$100 deductible in case of loss. The lighter trucks and automobiles are subject to a \$50 deductible amount. That the [1506] trailers, semi-trailers, and tanks are subject to various deductible amounts ranging from \$26 to \$70 dependent upon the size of the item insured.

Trial Examiner Riemer: You have heard the offer and the statement of counsel, Mr. Penfield. Is there any objection to that, Mr. Penfield?

Mr. Penfield: No objection.

Trial Examiner Riemer: Is the statement by Mr. Merrill with respect to the schedule attached satisfactory?

Mr. Penfield: It is.

Trial Examiner Riemer: It may be accepted and admitted in evidence as Respondent's Exhibit No. 10.

(Whereupon the document hereinabove referred to was received in evidence as Respondent's Exhibit No. 10.)

RESPONDENT'S EXHIBIT No. 10

National Standard
All Coverage Automobile
Policy
Issued To

Idaho Refining Company, et al
Automobile Fleet—Per Schedule
Expires August 22nd, 1942
at 12:01 A.M., Standard Time
No. FM 227

Firemen's
Insurance Company
of Newark, New Jersey
—And—

The Metropolitan
Casualty Insurance Company
of New York
Pacific Department
220 Bush Street
San Francisco, California
Please Read Your Policy

Carefully Note Conditions Requiring Immediate
Notice of Loss or Accident

Firemen's Insurance Company of Newark,
New Jersey
and

The Metropolitan Casualty Insurance Company
of New York
Stock Companies

Declarations

Automobile Policy

Respondent's Exhibit No. 10—(Continued)

Item 1. (a) Name of Insured Idaho Refining Co., Idaho Gas and Oil Co. & Covey Gas & Oil Co. of Idaho

(b) Address (Number, Street, Town, County and State) Pocatello, Idaho

(c) The automobile will be principally garaged and used in the above town, county and state, unless otherwise specified herein: No Exceptions

(d) The named Insured is (State Whether Individual, Corporation, or Copartnership—if Latter, Give Names of Partners) Corporation

(e) Insured's occupation or business is (If Married Woman, Give Husband's Occupation or Business) Oil Refining

(f) Employer's name and address.....

Item 2. Policy Period: From August 22, 1941 to August 22, 1942 12:01 A.M., Standard Time at the address of the named Insured as stated herein.

Item 3. The insurance afforded is only with respect to such and so many of the following Coverages as are indicated by specific premium charge or charges. The limit of the Company's liability against each such Coverage shall be as stated herein, subject to all of the terms of this policy having reference thereto.

Respondent's Exhibit No. 10—(Continued)

	Limits of Liability	Net Rates	Insurer		Coverages as Defined in the Policy
			Firemen's Premium	Metropolitan Premium	
A	Per Schedule Att.	\$			Comprehensive (excluding Collision or Upset)
B	Per Schedule Att.	\$2411.50			Fire, Lightning and Transportation
C	Per Schedule Att.	\$			Theft, Robbery and Pilferage Broad Form (Insert "Broad" or "Deductible amount")
D		\$			Tornado, Cyclone, Windstorm, Hail, Earthquake Explosion and Water Damage
E	Actual cash value less amount deductible, if any	\$2554.00			Collision
F	Actual cash value Inc. See "A" Above				\$ Per Schedule Att. Amount Deductible
G	\$ 5,000.00 each accident	\$ 998.40			\$ Not Cov. Additional Prem. Convertible
H	\$100,000.00 each person \$100,000.00 each accident As per Endorsement				Glass Damage Including Cost of Replacement Property Damage Liability
	Premiums—each Insurer	\$5,963.90			Bodily Injury Liability
				\$2387.65	
		\$ Nil		\$ Nil	
				\$2387.65	
					Total Policy Premium \$8351.55

Use this Space for Additional Coverage

Item 4. Description of the Automobile and facts respecting its purchase by the named insured:

Trade Name, Type of Body or Load Capacity, if Truck, Seating Capacity, if Bus	Motor and Serial Number	Model No. or Letter No. Cyl. and Year	Cost to Insured including Equipment		Purchased by Insured	
			Factory List Price	Month Year	New or 2nd Hand	
See Auto Fleet Schedule Attached						\$
						\$

M-

S-

Respondent's Exhibit No. 10—(Continued)

Item 5. The named Insured is in possession and the sole owner of the above described automobile, subject only to the following Mortgage, Lien or other Encumbrance, if any:

(Blank form.)

If mortgaged or encumbered, loss, if any, under Coverages A, B, C, D or E payable as interest may appear, to the named Insured and (Give name and address)

Item 6. The purposes for which the automobile is to be used are Trucks—Commercial Use. Pri. Pass—Bus & Pleasure

(a) The term “pleasure and business” is defined as personal, pleasure, family and business use.

(b) The term “commercial” is defined as use principally in the business occupation of the named Insured as stated in Item 1, including occasional use for personal, pleasure, family and other business purposes.

(c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

Item 7. No insurer has canceled any automobile insurance issued to the named Insured, nor declined to issue such insurance, during the past year, except as herein stated: No Exceptions

Respondent's Exhibit No. 10—(Continued)
Countersigned at Pocatello, Idaho this 22nd day
of August 1941.

TURNER INSURANCE
AGENCY, INC.

By R. S. TURNER
Authorized Agent.

Auto F 1185—Cas. 7180-2d Rev.

[Stamped]: Specimen.

Printed in U. S. A.

Page 2

Firemen's Insurance Company of Newark,
New Jersey
and

The Metropolitan Casualty Insurance Company
of New York

(Each a Stock Insurance Company Herein Called
the Company)

Do hereby Severally Agree with the Insured,
named in the Declarations made a part hereof, in
consideration of the payment of the premium and
of the statements contained in the Declarations and
subject to the limits of liability, exclusions, condi-
tions and other terms of this policy, provided (1)
that the Firemen's Insurance Company of Newark,
New Jersey shall be the insurer with respect to
Coverages A, B, C, D, E, F and G and no other,
and (2) that The Metropolitan Casualty Insurance
Company of New York shall be the insurer with re-
spect to Coverage H and no other:

Respondent's Exhibit No. 10—(Continued)

Insuring Agreements

I. Coverage A—Comprehensive—Excluding Collision or Upset

To pay for any loss of or damage to the automobile and the equipment usually attached thereto, except that the Company shall not be liable for loss caused by collision with any other object or by upset.

Breakage of glass and damage caused directly by tornado, cyclone, windstorm, hail, falling aircraft or parts thereof and damage resulting from theft, earthquake, explosion, riot, riot attending a strike, insurrection or civil commotion shall not be deemed a loss caused by collision or upset.

Coverage B—Fire, Lightning and Transportation

To pay for loss consisting of injury to or destruction of the automobile and its equipment usually attached thereto caused by fire, arising from any cause whatsoever; or lightning; or the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported on land or water, including general average and salvage charges for which the Insured is legally liable.

Coverage C—Theft, Robbery and Pilferage—(Broad Form):

To pay for loss consisting of the theft, robbery or pilferage of the automobile and its equipment usually attached thereto or injury to or destruction of such property directly resulting from the

Respondent's Exhibit No. 10—(Continued)

theft, robbery or pilferage, excluding however, the theft, robbery or pilferage of tools or repair equipment, unless the entire automobile is stolen.

Theft, Robbery and Pilferage—(Deductible Form):

To pay for loss consisting of the theft, robbery or pilferage of the automobile and its equipment usually attached thereto or injury to or destruction of such property directly resulting from the theft, robbery or pilferage, but only the amount of each separate loss, when determined, in excess of the deductible sum stated in Item 3 of the Declarations, unless the entire automobile is stolen, in which event the deduction shall not be made.

Coverage D—Tornado, Cyclone, Windstorm, Hail, Earthquake, Explosion and Water Damage

To pay for loss consisting of injury to or destruction of the automobile and its equipment usually attached thereto caused by tornado, cyclone, windstorm, hail, earthquake, explosion, or accidental and external discharge or leakage of water.

Coverage E—Collision

1. To pay for loss consisting of injury to or destruction of the automobile and its equipment usually attached thereto caused by accidental collision with another object or by upset, but only for the amount of each separate loss, when determined, in excess of the deductible sum, if any, stated in Item 3 of the Declarations.

Respondent's Exhibit No. 10—(Continued)
Convertible Form

2. To pay for loss as defined in Paragraph 1, provided that upon the occurrence of the first collision or upset which is made the basis of a claim hereunder, the Insured shall pay to the Company the additional premium, stated in Item 3 of the Declarations, applicable to the automobile involved. Loss or damage occurring to the automobile previous to the reported accident shall in no event be considered the basis of a valid claim.

Coverage F—Glass Damage

To pay for loss consisting of injury (including cost of replacement) to any glass, caused by accidental breakage, if such glass is a part of the structure of the automobile, including any glass appliance permanently attached thereto, subject however, to the provisions stated in Condition M in the event that such injury is caused by collision with another object, or by upset.

Coverage G—Property Damage Liability

To pay on behalf of the Insured all sums which the Insured shall become obligated to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage H—Bodily Injury Liability

To pay on behalf of the Insured all sums which the Insured shall become obligated to pay by reason

Respondent's Exhibit No. 10—(Continued)
of the liability imposed upon him by law for damages, including damages for care and loss of services, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile.

II. Defense, Settlement, Supplementary Payments. It is further agreed that as respects insurance afforded by this policy under Coverages G and H the Company shall

(a) defend in his name and behalf any suit against the Insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the Company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the Company;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all cost taxed against the Insured in any such suit, all expenses incurred by the Company, all interest accruing after entry of judgment until the Company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon, and expenses incurred by the In-

Respondent's Exhibit No. 10—(Continued)

sured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

The Company agrees to pay the amounts incurred under division (a) and (b) of this section in addition to the applicable limit of liability of this policy.

III. Definition of "Insured". Except where specifically stated to the contrary, the unqualified word "insured" wherever used in coverages G and H and in other parts of this policy, when applicable to such coverages, includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided the declared and actual use of the automobile is "pleasure and business" or "commercial," each as defined herein, and provided further the actual use is with the permission of the named insured. The provisions of this paragraph do not apply:

(a) to any person or organization with respect to bodily injury to or death of any person who is a named insured;

(b) to any person or organization with respect to any trailer while used with any automobile not covered by like insurance in the company;

(c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any accident arising out of the operation thereof;

Respondent's Exhibit No. 10—(Continued)

(d) to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured.

IV. Use of Other Private Passenger Automobiles. Such insurance as is afforded by this policy for bodily injury liability and for property damage liability applies (1) to the named insured, if an individual and the owner of the automobile classified as "pleasure and business" or if husband and wife either or both of whom own such automobile, and (2) to the spouse of such individual if a resident of the same household and to the employer of such named insured, as insured, with respect to the operation of any other private passenger automobile by such named insured or spouse or by a private chauffeur or domestic servant in the employ of such named insured or spouse, and with respect to the presence of such named insured or spouse in any other private passenger automobile. The provisions of this paragraph do not apply:

(a) to any automobile (1) owned in full or in part by or registered in the name of the named insured or any member of the household thereof, other than a private chauffeur or domestic servant employed in connection therewith, or (2) hired as part of a frequent use of hired automobiles by or furnished for regular use to the named insured, a

Respondent's Exhibit No. 10—(Continued)

robes, wearing apparel and other personal effects;

(2) to (a) wear and tear; (b) mechanical or electrical breakdowns, failures or breakages; (c) freezing; [illegible] damage to tires; except where such damage shall be directly caused by, and resulting from other loss or damage which is covered hereunder;

(3) to loss of tools or repair equipment by theft, robbery or pilferage unless the entire automobile is stolen;

(4) to loss or damage due to: (a) wrongful conversion, embezzlement or secretion by a mortgagor, vendee, lessee or other person in lawful possession of the insured property under a mortgage, conditional sale, lease or other contract or agreement, whether written or verbal; (b) war, invasion, military, naval or usurped power; (c) confiscation or authorized destruction by duly constituted governmental or civil authorities;

(5) while the automobile (a) is used in any illicit or prohibited trade or transportation; or (b) is subject to any lien, mortgage or other encumbrance not specifically described in the policy;

Page 3

(c) Under Coverages B, C, D and E, if the interest of the Insured is or becomes other than as stated [illegible] this policy without the written consent of the Company; [illegible] any event for robes, wearing apparel and other personal effects or extra bodies, or for loss caused directly or in-

Respondent's Exhibit No. 10—(Continued)
directly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power or by any order of any civil authority;

(d) Under Coverage C, to loss from theft, robbery or pilferage by any person or persons in the Insured's household, or in the Insured's service or employment, whether the theft, robbery or pilferage occurs during the hours of such service or employment or not; or by any person, or agent thereof, or by the agent of any firm or corporation to which person, firm or corporation the Insured, or any one acting under express or implied authority of the Insured, voluntarily parts with title or possession, whether or not induced so to do by any fraudulent scheme, trick, device or false pretense; or to loss from the wrongful conversion, embezzlement or secretion by a mortgagor, vendee, lessee or other person in lawful possession of the insured property under a mortgage, conditional sale, lease or other contract or agreement, whether written or verbal;

(e) Under Coverage D, to loss caused by rain, sleet, snow, flood, rupture of tires, or explosion within the combustion chamber of an internal combustion engine;

(f) Under Coverage E, to loss caused directly or indirectly by fire, theft, robbery or pilferage, or consisting of injury to any tire unless caused by an accidental collision or upset of the automobile which causes other injury to the automobile;

(g) Under Coverage [illegible], to loss caused

Respondent's Exhibit No. 10—(Continued)
directly or indirectly by fire, theft, robbery or pilferage;

(h) Under Coverages E, F, G and H, while the automobile is operated (1) by any person under the minimum age required to obtain a license to operate a private passenger automobile in the state, federal district or territory, or province in which the automobile is registered or in which the accident occurs, whichever is lower, or (2) by any person under the age of fourteen years;

(i) Under Coverage G, to property owned by, rented to, in charge of, or transported by the Insured;

(j) Under Coverages G and H, to any liability assumed by the Insured under any contract or agreement; or while the automobile is used for the towing of any trailer not covered by like insurance in the Company; or while any trailer covered by this policy is used with any automobile owned or hired by the named Insured and not covered by like insurance in the Company;

(k) Under Coverage H, to bodily injury to or death of any employee of the Insured while engaged in the business (other than domestic employment), of the Insured, or while engaged in the operation, maintenance or repair of the automobile; or to any obligation for which the Insured may be held liable under any Workmen's Compensation Law.

Respondent's Exhibit No. 10—(Continued)

Conditions

Conditions A to H inclusive apply to all Coverages. Conditions I to W inclusive apply only to the Coverage or Coverages noted thereunder.

A—Declarations

By acceptance of this policy the named Insured agrees that the statements in the Declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

B—Automobile Defined. Two or more Automobiles

Except where specifically stated to the contrary, the word "automobile" wherever used in this policy shall mean the motor vehicle, trailer or semitrailer described herein; and shall include under coverages G and H a trailer other than a trailer home, while used exclusively for personal, pleasure or family purposes, other than business purposes, with any private passenger automobile insured hereunder; and the word "trailer" shall include semitrailer. When two or more automobiles are insured hereunder the terms of this policy shall apply separately to each but as respects limits of bodily injury liability and property damage liability a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile.

Respondent's Exhibit No. 10—(Continued)

C—Assistance and Cooperation of the Insured

The Insured shall cooperate with the Company and, upon the Company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Company shall reimburse the Insured for expenses, other than loss of earnings, incurred at the Company's request. The Insured shall not, except at his own cost, voluntarily make any payments, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

D—Subrogation

In the event of any payment under this policy the Company shall be subrogated to all the Insured's rights of recovery therefor and the Insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

E—Assignment

No assignment of interest under this policy shall bind the Company until its consent is endorsed hereon; if, however, the named Insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall, if written notice be given to the Company within thirty days after the date of such death or adjudication, cover (1) the named Insured's legal repre-

Respondent's Exhibit No. 10—(Continued)
sentative as the named Insured, and (2) subject otherwise to the provisions of Paragraph III, any person having proper temporary custody of the automobile, as an Insured, until the appointment and qualification of such legal representative, but in no event for a period of more than thirty days after the date of such death or adjudication.

F—Changes

No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by a duly authorized representative of the Company.

G—Cancelation

This policy may be canceled by the named Insured by mailing written notice to the Company stating when thereafter such cancellation shall be effective. This policy may be canceled by the Company by mailing written notice to the named Insured at the address shown in this policy stating when not less than five days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy shall end on the effective date and hour of cancelation stated in the notice. Delivery of such written notice either by

Respondent's Exhibit No. 10—(Continued)

the named Insured or by the Company shall be equivalent to mailing.

If the named Insured cancels, earned premiums shall be computed in accordance with the customary short rate table. If the Company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time the cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the named Insured.

H—Statutory Provisions

Any and all provisions of this policy which are in conflict with the statutes of the State wherein this policy is issued are understood, declared and acknowledged by this Company to be amended to conform to such statutes.

I—Limit of Liability Coverages A, B, C, D and E

The Company's limit of liability with respect to the automobile and its equipment shall be the actual cash value of the property injured, destroyed or stolen, at the time of injury, destruction or theft, or the cost of its suitable repair or replacement not in excess of such cash value, and loss shall be ascertained or estimated accordingly with proper deduction for depreciation however caused and without compensation for loss of use and shall in no event exceed the limit of liability,

Respondent's Exhibit No. 10—(Continued)

if any, stated in Item 3 of the Declarations. In the event of such loss as is covered under this policy the full amount of such loss shall be determined by such ascertainment or estimate between the parties hereto, or if they differ, then by appraisal as hereinafter provided. In the event of loss or damage to the automobile, whether such loss or damage is covered by this policy or not, the liability of this Company shall be reduced by the amount of such loss or damage until repairs have been completed, but shall then attach as originally written without additional premium.

J—Limits of Liability Coverage H

The limit of bodily injury liability stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by one person in any one accident; the limit of such liability stated in the Declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by two or more persons in any one accident.

K—Limits of Liability Coverages G and H

The inclusion herein of more than one Insured

Respondent's Exhibit No. 10—(Continued)
shall not operate to increase the limits of the Company's liability.

No recovery shall be had under this policy if at the time a loss occurs there be any other insurance, whether such other insurance be valid and collectible or not, covering such loss, which would attach if this insurance had not been effected.

M—Other Insurance Coverages F, G and H

If the Insured has other insurance against a loss covered by this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, that the insurance under Paragraph IV shall be excess insurance over any other valid and collectible insurance available to the insured, either as an insured under a policy applicable with respect to the automobile or otherwise, against a loss covered under said paragraph. As respects glass damage caused by collision with another object or by upset: (1) the Company's liability under Coverage F shall apply to such damage, but not in excess of the deductible amount specified in any valid and collectible collision insurance covering such damage, which provides that a specified amount shall be deducted from each loss; (2) the Company shall not be liable under Coverage F if such damage is covered in full by valid and collectible collision insurance.

Respondent's Exhibit No. 10—(Continued)

N—Notice of Accident—Claim or Suit Coverages
G and H

Upon the occurrence of an accident written notice shall be given by or on behalf of the Insured to the Company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the Insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses. If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

O—Notice of Loss Coverages A, B, C, D, E and F

In the event of loss covered hereby, the Insured shall give immediate notice thereof in writing to the Company. In the event of theft, robbery or pilferage the Insured shall also give immediate notice thereof to the Police.

P—Protection of Salvage Coverages A, B, C, D, E and F

In the event of any loss whether insured against hereunder or not, the Insured shall protect the property from other or further loss, and any such other or further loss due directly or indirectly to the Insured's failure to protect shall not be recoverable under this policy. Any such act of the Insured or the Company or its agents in recover-

Respondent's Exhibit No. 10—(Continued)

ing, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and where the loss suffered constitutes a claim under this policy, then all reasonable expenses thus incurred shall also constitute a claim under this policy.

Q—Proof of Loss Coverages A, B, C, D, E and F

Within sixty (60) days after loss, unless such time is extended in writing by the Company, the Insured shall render a statement to the Company, signed and sworn to by the Insured, stating the place, time and cause of the loss, the interest of the Insured and of all others in the property, the sound value thereof and the amount of loss, all encumbrances thereon, and all other insurance, whether valid and collectible or not, covering said property; and the Insured as often as required shall submit to examinations under oath by any person named by the Company and subscribe the same; and as often as required shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by the Company or its agent, and shall permit extracts and copies thereof to be made.

The Company shall have reasonable opportunity to examine any property insured hereunder upon which loss is claimed before repairs are undertaken or physical evidence of loss removed.

Respondent's Exhibit No. 10—(Continued)

R—Appraisal Coverages A, B, C, D, E and F

In case the Insured and the Company shall fail to agree as to the amount of loss each shall, on the written demand of either, select a competent and disinterested appraiser and the two appraisers so chosen shall first select a competent and disinterested umpire. The appraisers shall then appraise the loss, and failing to agree shall submit their differences to the umpire. The written award of any two shall determine the amount of loss. The Insured and the Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of appraisal and umpire.

The Company shall not be held to have waived any of the terms of this policy or any forfeiture thereof by any requirement, act or proceeding on its part relating to the appraisal or to any ex-

Page 4

amination provided for herein; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by the Company; and if appraisal is demanded, then not until sixty (60) days after an award has been made by the appraisers.

S—Payment of Loss Coverages A, B, C, D, E and F

The Company may, at its option, take all or any part of the insured property at the agreed or appraised value, or either repair or replace any part or all of the insured property upon which loss is claimed with other of like kind and quality or

Respondent's Exhibit No. 10—(Continued)

pay to the Insured in money the full amount of such loss as determined in accordance with the provisions of this policy, subject however, to such deduction if any, as may be applicable thereto. There can be no abandonment to the Company of any property insured hereunder.

T—Loss for Which Carrier or Bailee for Hire is Liable Coverages A, B, C, D, E and F

This Company shall not be liable for loss with respect to the automobile while the automobile is in possession of a carrier or bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such carrier or bailee; provided however, that the Insured may without prejudice to this insurance accept such bill of lading, receipts or contracts of transportation as are ordinarily issued by carriers, bailees or others containing a limitation of their liability for injury to property while in the possession of such carriers, bailees or others.

U—Action Against Company Coverages A, B, C, D, E and F

No action shall lie against the Company on account of any claim hereunder until the amount of loss shall have been finally determined in accordance with the provisions of Condition I nor unless commenced within twelve months next after the happening of the loss.

Respondent's Exhibit No. 10—(Continued)

V—Action Against Company Coverages G and H

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and the Company.

Any person or his legal representative who has secured such judgment or written agreement shall thereafter be entitled to recover under the terms of this policy in the same manner and to the same extent as the Insured. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

W—Financial Responsibility Laws Coverages G and H

Such insurance as is afforded by this policy for bodily injury liability or property damage liability shall comply with the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to

Respondent's Exhibit No. 10—(Continued)

any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

In Witness Whereof, Firemen's Insurance Company of Newark, New Jersey has caused this policy, with respect to Coverages A, B, C, D, E, F and G and such other parts of the policy as are applicable thereto, to be signed by its President and a Secretary and countersigned on the Declarations page by a duly authorized agent of the Company.

JOHN R. COONEY

President.

W. J. SCHMIDT

Secretary.

In Witness Whereof, The Metropolitan Casualty Insurance Company of New York has caused this policy, with respect to Coverage H and such other parts of the policy as are applicable thereto, to be signed by its President and a Secretary and coun-

Respondent's Exhibit No. 10—(Continued):
tersigned on the Declarations page by a duly authorized agent of the Company.

HOWE S. LANDERS

President.

[ILLEGIBLE]

Secretary

Important

Report Immediately any loss or accident in which your automobile is involved.

This report should be made to the Company's nearest Authorized Agent or to the Company's

Eastern Department

Newark, New Jersey

or

Western Department

Chicago, Illinois

or

Pacific Department

San Francisco, California

or

Southwestern Department

Dallas, Texas

or

Canadian Department

Toronto, Ontario

If serious or fatal injury results, use telegraph or telephone to make report, giving name of Insured, policy number, and name of City or Town where policy was issued.

Respondent's Exhibit No. 10—(Continued)

Get the names and addresses of all material witnesses and give the Company's representative all possible cooperation. Report theft losses to Police.

The Company has claims offices in all important Cities and is equipped to render prompt service throughout the United States and Canada.

Prompt Notice To The

Company Will Insure

Immediate Service

[Cut]

Respondent's Exhibit No. 10—(Continued)

CLASSIFICATION OF MOTOR VEHICLES COVERED ON FIREMEN'S METROPOLITAN CASUALTY INSURANCE COMPANY—No. F.M.-227

Passenger Cars

Light Trucks

Heavy Trucks

Trailer and Semi-Trailers

Item No. Make of Vehicle

Item No. Make of Vehicle

Item No. Make of Vehicle

Item No. Make of Vehicle

1. Oldsmobile Sedan (1937)
2. Dodge Tudor Sed. (1935)
3. Packard Convert. Coupe (1939)
4. Buick Coupe (1940)
5. Cadillac Sedan Model "6109" (1941)
50. Buick Sedanet (1941)
66. Buick Sedan 2-Dr. (1941)
- Ind. Pontiac Coupe (1941)

6. Replaced by Ind. 11 Studebaker Truck (1937) (Motor #168863)
7. Internat'l 1 1/2 T. Panel Truck (1938)
13. Internat'l D-30 Pickup #13 (1940)
17. Ford 1 1/2-Ton Panel Truck (1940)
18. Ford 1 1/2-Ton Panel Truck (1940)
35. GMC 1 1/2 Ton Model T18D (1936)
40. Dodge 1 1/2 T. Truck #25 (1940)
41. Ford 1 1/2 Ton Truck #10 (1939)
43. Ford 1 Ton 300 G. Tank Trk. (1939)
44. Ford 1 1/2 Ton Trk. 300 Ga. Tank (1941)
45. Ford 3/4 Ton Express Truck (1940)
46. GMC 1 1/2 T. "AC102" Pickup (1940)
47. GMC 1 1/2 Ton Tank Trk. "AC303" (1940)
48. Chev. 1 1/2 Ton Stake Truck (1940)
49. Chev. 1 1/2 Ton Truck #24 (1939)
52. Ford 1 1/2 T. Truck 2500 Gal. Tank (1939)
53. Chevrolet 1 1/2 T. Pickup (1931)
54. Internat'l C30 1 1/2 T. Truck (1935)
55. (Replaced by Ind. #14)
- Ind. #14—Chev. 1 1/2 T. Pickup (1931)
57. Internat'l 1000 gal. Tank Trk. (1936)
58. Chev. 1 1/2 Ton Trk. (1939)
59. Chev. 3/4 Ton Tank Truck (1938)
60. Chev. 1 1/2 T. 425 Gal. Tank Trk. (1937)
61. Chev. 1/2 Ton 600 Gal. Tank (1940)
62. Ford 1 1/2 T. Truck 690 Gal. Tank (1940)
63. Chev. 1 1/2 Ton 600 Gal. Tank Trk. (1939)
64. G.M.C. 1/2 T. Truck 400 Gal. Tank (1939)
65. Chev. 1 1/2 Ton 600 Gal. Tank Trk. (1937)
- Indorsement No. 7—G.M.C. Stake Body Truck 500 Gal. Tank (1941)
- Ind. # 8—Ford 1 1/2 T. Truck (1934)
- Ind. #20—Internat'l 1 1/2 T. Trk—Chassis #4565 (1941)

- 2 Tons or more (in excess of 2500 Gal.)
8. Internat'l #5 Trk. 1932 3240 Gal. Tank
9. Replaced by Ind. #11 White 4 Ton Truck—Mot. #749940 (1936)
10. Diamond T 2 1/2 Ton Trk. 1938
11. Internat'l DS35 Gas Truck (1939) #11
12. Internat'l DS35 Gas Truck #12 (1939)
14. Internat'l DS50 #14 (1940)
15. Mack 4 to 5 Ton Truck #16 (1940)
16. Mack 6 to 7 Ton Tractor Type Trk. (1940)
19. Internat'l DS 50—3 to 4 Ton (1940)
20. Internat'l DS 35—2 Ton Trk. (1940)
25. Internat'l DR 60 Trk. #7 (1939)
33. White Tank Truck Model 750T #28 (1941)
34. Mack Tractor Type Tnk Mod. Lft. #26 (1941)
38. Mack 5T. 200 Gal. Tank Fuel Trk. Model LRSW (1941)
51. Replaced by Ind. #15—Ford 1 1/2 T. 2500 Gal. Trk. (1939)
56. Internat'l 3760 Gal. Tank Truck (1933)
- Indorsement #9—Kenworth Diesel & Wentwin Semi-Trail (4500 Gal) (1940)
- Ind. #10—Fageol Truck & Wintwin Trail (1937)
- Ind. #16—Internat'l Heavy Trk. (1939)
- Ind. #17—Kenworth 4-Ton Truck (1941)
- Ind. #19—Fruehauf 5000 Gal. Tank Trailer (1939)

21. 3000 Gal. Tank Semi-Trail. #11 (1939)
22. 3000 Gal. Tank Semi-Trail. #12 (1939)
23. 3050 Gal. Tank Semi-Trail. #9 (1939)
24. 3000 Gal. Tank, Semi-Trail. #22 (1939)
26. 3-600 Gal. Tank, Semi-Trail. #7 (1938)
27. 3500 Gal. Tank, No. 17 Trailer (1940)
28. 4250 Frenhof Tank Trail. #14 (1940)
29. 4640 Gal. Frenhof Semi-Trail. #16 (1938)
30. 4250 Gal. Frenhof Tank Trail. #20 (1940)
31. 3500 Gal. Tank #8 Olson Semi-Trail.
32. 5000 Gal. Frenhof Trail #26 (1941)
36. Kingham 3500 Gal. Tank Semi-Trailer Mod. T30D #17 (1941)
37. 3000 Gal. Tank Frenhof 6 Wheel Trail. #3 (1940)
39. Flat Back Trailer #23
42. 3000 Gal. Tank Semi-Trail. #10 (1939)
- Indorsement #18—Fruehauf 5000 Gal. Tank Trailer (1939)

Total 8

31

21

16

Recap—Totals:

Passenger Cars 8
 Light Trucks 31
 Heavy Trucks 21
 Trailers & Semi-Trailers 16
 Total Units 76



Mr. Merrill: I will call Mr. Peters.

DELMAR R. PETERS

previously sworn, was recalled on behalf of the Respondent and further testified as follows:

Q. (Trial Examiner Riemer): You are the Delmar R. Peters who has been previously sworn and identified? A. Yes.

Direct Examination

Q. (Mr. Merrill): Mr. Peters, you are the president, I understand, of the Idaho Refining Company Employees Benefit & Labor Association? [1507] A. That's right.

Q. How long have you been a member of that association? A. Since May, 1939.

Q. During that period of time, have you taken an active part in that association?

A. Not until I was elected president in 1941.

Q. Well, prior to that time you served on various committees? A. No.

Q. I thought you served on the Grievance Committee? A. Oh, that's right—I did.

Q. What is *the as* to the regularity of your attendance at the meetings of the association—Have you attended regularly those meetings?

A. Since 1939?

Q. Yes. A. Well, whenever I could, I did.

Q. What functions are performed by the association for its members?

A. The sick benefits and bargaining with the company are the two main businesses of the association.

(Testimony of Delmar R. Peters.)

Q. Is the association performing those functions? A. Yes, they are.

Q. What is the desire or the feeling of the membership of the association, if you know, as to its functioning and working? [1508]

Mr. Penfield: I object to that. I don't think it is competent.

Trial Examiner Riemer: Overruled.

A. Well, I haven't heard any complaints.

Q. (Mr. Merrill): Well, what have you heard with respect to the desires of the membership, if anything—of the various members, if anything, for a preservation of the association?

A. Well, naturally the members would like to see the association continue in view of the fact that there have been numerous employees received benefits from the association that have helped them carry over at times when they have been sick or injured where it would otherwise have been an awful hardship on them.

Q. What have you to say with respect to the bargaining abilities of the association?

Mr. Leicht: I would like to object to that on the grounds it is immaterial what their desires are of bargaining.

Trial Examiner Riemer: Well, some Circuit Courts seem persuaded by that sort of testimony. I wouldn't say it is altogether immaterial. The objection is overruled.

Read the question.

(Testimony of Delmar R. Peters.)

(Thereupon the question referred to was read aloud by the reporter as hereinabove recorded.)

A. We haven't had any trouble bargaining with the company.

Q. (Mr. Merrill): Have you engaged in bargaining with the [1509] company?

A. Yes.

Q. And has it been satisfactory?

A. Yes.

Q. State whether or not there has ever been any type or kind of interference, domination, or attempted control so far as you know by any officer or supervisory employee of the refinery company, the respondent herein.

Mr. Leicht: I object to that——

Trial Examiner Riemer: The objection is overruled.

A. None that I know of.

Q. (Mr. Merrill): Have you ever observed any such? A. No. [1510]

Q. Mr. Peters, do you recall who preceded you as president of the association?

A. I am not sure about that but I believe it was Haskell Duncan—I am not positive.

Q. Do you know whether or not Mr. Henninger was ever president of the association?

A. Mr. Henninger?

Q. Yes.

(Testimony of Delmar R. Peters.)

A. Well, I *have* that he was at some time.

Q. And do you know whether or not Mr. Henninger and Mr. Rice attended any of your meetings within the past year?

A. Henninger did one meeting.

Q. You have members who are in a supervisory capacity, do you not, in the plant?

A. Yes, we have members in that capacity.

Trial Examiner Riemer: What was the answer?

A. Yes. [1511]

BOARD'S EXHIBIT No. 25-A

IDAHO REFINING COMPANY

ANALYSIS OF MECHANICS DAYS WORKED AND TIME OFF FOR
PERIOD JANUARY 25, 1941 TO NOVEMBER 13, 1941

ROSCOE CHARLES BOYER

Date	Days Off	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Hours	Average Day
June 1 to 15, 1941..... (June 4th—first day)	1	1							105	
June 16 to 30, 1941.....	6 7	2—22829		1—17th	1—18th	1—19th	1—20th	1—21st	82½	
July 1 to 15, 1941.....	4	2—6 & 13					1—4th	1—5th	117	
July 16 to 31, 1941.....	2	2—20-27th							155½	
August 1 to 15, 1941.....	2	2—3-10							150½	
August 16 to 31, 1941..... (August 23rd—last day)	1	1—17th							69	
81 Days	16	9 10		1	1	1	2	2	679½	8.4

BOARD'S EXHIBIT No. 25-B

IDAHO REFINING COMPANY

ANALYSIS OF MECHANICS DAYS WORKED AND TIME OFF FOR
PERIOD JANUARY 25, 1941 TO NOVEMBER 13, 1941

ORAN THOMAS

Date	Days Off	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Hours	Average Day
September 1 to 15, 1941..... (Sept. 3—first day)	None								131	
September 16 to 30, 1941.....	1	1—21st							145½	
October 1 to 15, 1941.....	1	1—12th							154½	
October 16 to 31, 1941.....	4	2—19 & 26th							125	
November 1 to 13, 1941.....	2	1—2nd		1—11th				2—18th & 25	109	
72 Days	8	5		1				2	665	9.2



Mr. Penfield: We will call Mr. Cornia.

BOYD CORNIA

was called as a witness by and on behalf of the Board, being [1526] first duly sworn, was examined and testified as follows:

Q. (Trial Examiner Riemer): Tell us your name. A. Boyd Cornia.

Q. Where do you live?

A. 756 East Lander, Pocatello.

Direct Examination

Q. (Mr. Penfield): Where are you employed, Mr. Cornia?

A. I am employed out at the relining plant.

Q. Gun relining plant? A. Yes.

Q. In what capacity? A. Truckdriver.

Q. Were you ever employed by the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truckdriver.

Q. For what period?

A. I started in May, along about the middle of May 1940.

Q. And you worked until when?

A. November 14.

Q. 1941? A. 1941.

Q. Mr. Cornia, there has been some testimony in this proceeding with respect to an accident in May 15, 1941 in which you were involved. Can you tell us where this [1527] accident occurred and what were the circumstances?

(Testimony of Boyd Cornia.)

A. It occurred at the refinery out at the loading dock—the gate by the loading dock.

Q. Will you explain to us just what happened?

A. Well, I came out in the morning about around one o'clock, I should say, and I went out and got my truck and it had just been overhauled—put in the shop——

Trial Examiner Riemer: Speak up, I don't hear you.

A. (continuing): It has been in the shop being overhauled and I was to take a load of fuel oil to Boise, and I and a loader went down to load the truck—we had to take it down to the tank farm to load it, where they loaded the diesel fuel, and loaded it up and came back around and up to the loading dock to get some fuel for the truck. Just before we got to the loading dock, it sprang a leak—a plug came out—it had been broke off.

Trial Examiner Riemer: What?

A. (continuing): The plug came out. It had been broken off. It was cracked and I guess it fell out and it started to leak and I waited until the loader came and held my hand over the hole the best I could so it wouldn't all leak out. He came up and brought his samples and left them in the laboratory as he came through, and I told him we had an awful bad leak, and asked him what we should do with it.

Trial Examiner Riemer: Who is called him?"

[1528]

(Testimony of Boyd Cornia.)

A. (Continuing): Mr. Hall was his name. He was the man who was in charge of the loading dock that shift, and he said, "Let me get around and see if I can stop it," and he had a rag and he tried to plug it in the hole, but the force kept pushing it out, and he says, "Get in there and drive it down and we will unload it, I can hold it," and I says, "No, you can't do it. It is too hard to ride back there and hold a thing like that," and he still insisted and I said, "No, we better get something and plug it before we start," and he said, "Oh, get in there. It will all be leaked out before we can get started," and I still insisted that we didn't do it that way, but he insisted, I get in there before it all leaked out and insisted that I could drive slow and he could hold it all right, so I got in and started out and made two right-hand turns, and when I made the third right-hand turn, I just glanced over my shoulder and it looked like it was getting away from the tank, so I put the brakes on the trailer and the truck both. The trailer had vacuum brakes on it and there was kind of a slope around the corner and the trailer kept coming. It seemed like came right towards Mr. Hall, and before I could get the door open why he came out of the same side of the truck as I was driving and I asked him if he was hurt, and he says, "Yes, I am hurt pretty bad. You better call the ambulance and the doctor," and

(Testimony of Boyd Cornia.)

I asked him if he would [1529] be all right until I could get back and he said, "Yes," so I ran over to the laboratory and there were a couple of fellows in there and I told them to call the ambulance and the doctor and one of them came back to the scene of the accident with me and after the ambulance came and took him in why then I went and called Mr. Rice and told him we had had an accident.

Q. (Mr. Penfield): Did Mr. Rice say anything about the cause of this accident or your fault in the accident?

A. No, sir. He said not to feel too bad. He said he didn't think it was my fault in any way.

Q. What happened to Mr. Hall, did he die?

A. Yes, sir; he died the next day about noon, I think.

Q. You mentioned that you sought to put on the brakes? Did the brakes from the trailer hold, Mr. Cornia?

A. No, sir; they didn't.

Q. If they had held, could the accident have been prevented?

A. Well, I believe it could.

Q. There has been some testimony concerning a conversation alleged to have occurred around the latter part of September or the first part of October between Mr. Moyle and Mr. Loren McBride.

Trial Examiner Riemer: Gilbert Moyle.

Q. (Mr. Penfield): Gilbert Moyle, Loren McBride at Boise, Idaho. Do you know anything about that conversation? [1530]

A. Yes, sir.

(Testimony of Boyd Cornia.)

Q. Will you tell us what you know?

Mr. Merrill: We object to that on the ground it is in no sense proper rebuttal.

Mr. Penfield: Mr. Gilbert Moyle specifically denied that conversation took place.

Mr. Merrill: Yes, if it please the Examiner, it was part of their direct case and they put on proof covering that. If they had any additional proof, it should have been put on then. This is not proper rebuttal and we object to it.

Mr. Penfield: They have specifically denied that this conversation ever took place and it didn't take place between this witness. We are seeking to prove this witness overheard this conversation.

Mr. Merrill: If there is anything to the testimony at all, it should have been part of their direct case. It is not proper rebuttal under any rule of evidence.

Mr. Penfield: We didn't know it was going to be denied.

Trial Examiner Riemer: The objection is overruled. Repeat the question to the witness and let the respondent have a continuing objection to this line of inquiry.

(Thereupon the question referred to was read aloud by the reporter as hereinabove recorded.)

A. Well, I was sent to Boise on the flat rack with a load of tires and also to deliver some tanks from Boise into [1531] Huston the next day and I was to meet Mr. Moyle at the plant in Boise—

(Testimony of Boyd Cornia.)

the bulk plant, the next morning, so it was about two o'clock in the morning when I got into Boise and I called up the plant manager which was Mr. Sheppard at that time, and he told me to call Mr. Williams, which I did, and he came down and we unloaded the tires then I went up to the hotel and went to bed. I came down to the plant the next morning to meet Mr. Moyle, and when I got there, he was talking to Mr. McBride. I was standing back there waiting for Mr. Moyle to get through so I could get my orders where to deliver the tanks, and he said that—Mr. Moyle said to Mr. McBride, he said, "You would be a pretty good driver if you didn't have that union button on your cap." He says, "Oh, I don't know, I will be up and join your boys one of these days," and he says, "If you do, I will can every damn one of them."

Q. Who said that? A. Mr. Moyle.

Q. Who made the remark about going up and joining the union? A. Mr. McBride.

Q. Is that all the conversation you overheard?

A. Well, that is all I overheard. I turned and walked away over to my truck where I had parked.

[1532]

Mr. Merrill: We offer Rule No. 1 of the Rules and Regulations [1588] of the Interstate Commerce Commission effective November 15, 1936, the same dealing with a motor carrier engaged in interstate commerce and the requirement covering insurance. Shall I read it into the record?

Trial Examiner Riemer: No.

Mr. Merrill: We also offer Rule No. 5, the same being qualifications of a self-insurer and other securities or agreements.

We also offer that portion of Rule No. 7 reading as follows:

“Motor carriers and brokers subject to the jurisdiction of this Commission are hereby required to maintain in effect at all times the security for the protection of the public contemplated in Sections 211(c) and 215, Motor Carrier Act, 1935, and prescribed by these rules.”

We also offer rule No. 8, dealing with the policies of insurance and their character.

Trial Examiner Riemer: Were those rules in force and effect in November, 1941, Mr. Merrill?

Mr. Merrill: Yes, sir.

Trial Examiner Riemer: Does the Board have any objection, Mr. Penfield?

Mr. Penfield: Well, I think that it is immaterial, but aside from that I have no objection.

Trial Examiner Riemer: It may be admitted in evidence and [1589] marked as Respondent's Exhibit 11.

(Whereupon the document hereinabove referred to was marked and received in evidence as Respondent's Exhibit 11.) [1590]

Mr. Moyle: Comes now respondent, Idaho Refining Company, and at the conclusion of the hearing of this matter and after all sides have rested, and renews the motion which it heretofore made at

the conclusion of the Board's case in haec verba with the understanding that said motion is now predicated and based on all the evidence adduced at this hearing rather than merely the evidence which had been produced by the Board up to the time that the Board rested and the previous motion was made, and if the Examiner will accept this motion renewed in this fashion, the same as though it were re-read into the record, we would appreciate it very much.

Trial Examiner Riemer: I do so accept it, and with respect to your motion as now made, ruling is reserved. [1595]

[Endorsed]: No. 10583. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Idaho Refining Company, Respondent. Transcript of Record. Upon Petition for Enforcement of An Order of the National Labor Relations Board.

Filed October 18, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.